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The Washington Monthly

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The Man Who Made Liz Smith, "Larry King Live," and "Crossfire" Possible

The Five Dumbest Supreme Court Decisions

Reviews by Gregg Easterbrook, Hobart Rowen, Adam Yarmolinsky, and Diana McLellan

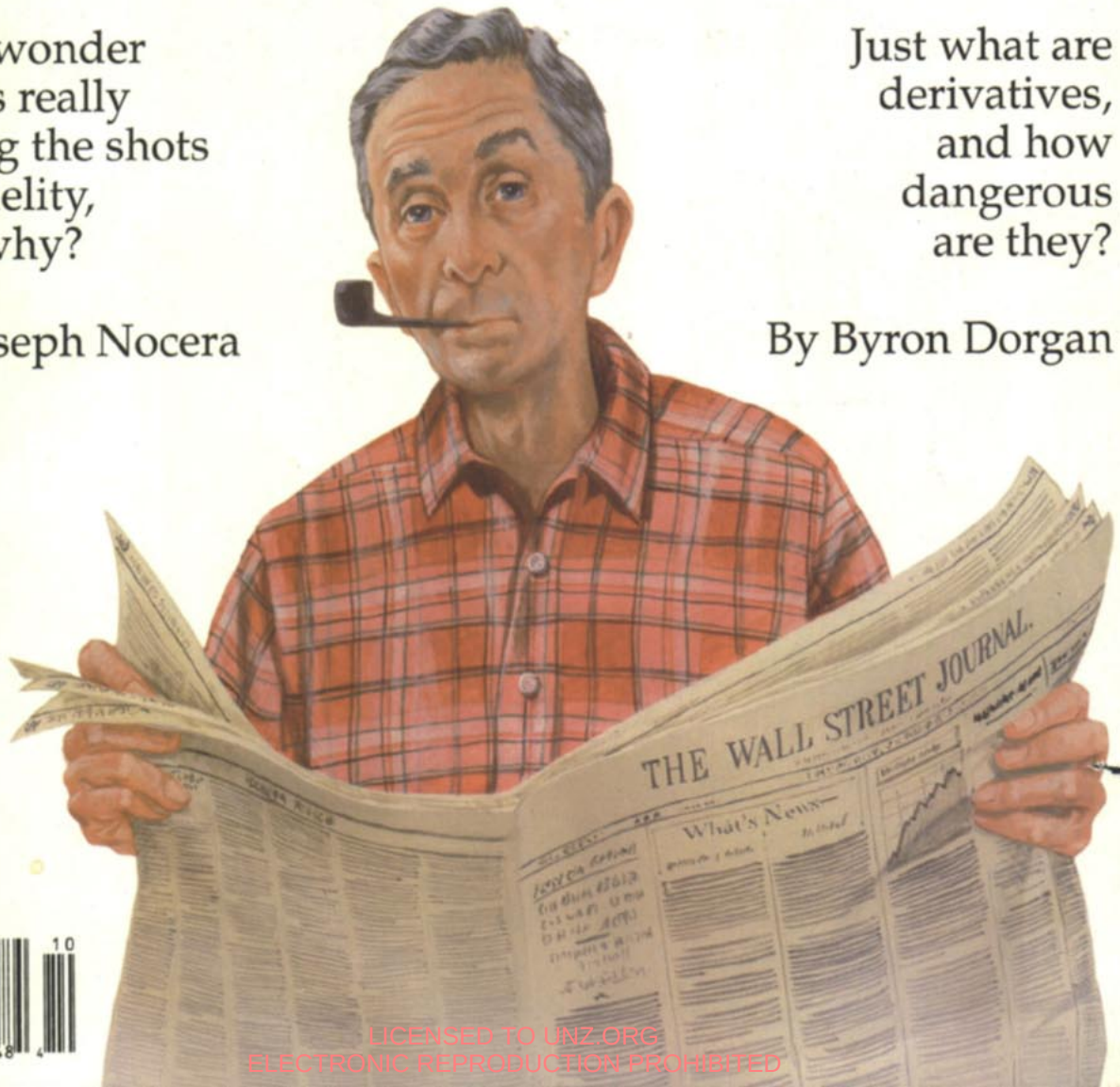
THE RISKS THE AVERAGE MAN RUNS ON WALL STREET

Ever wonder who's really calling the shots at Fidelity, and why?

By Joseph Nocera

Just what are derivatives, and how dangerous are they?

By Byron Dorgan



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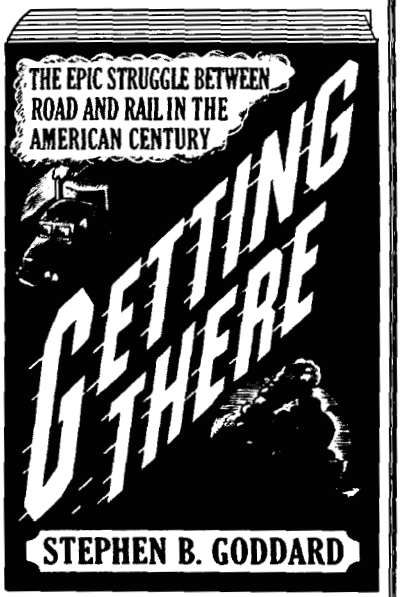

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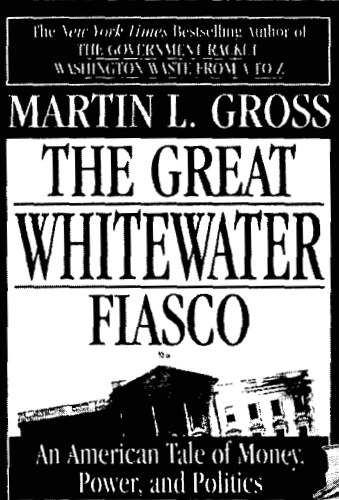

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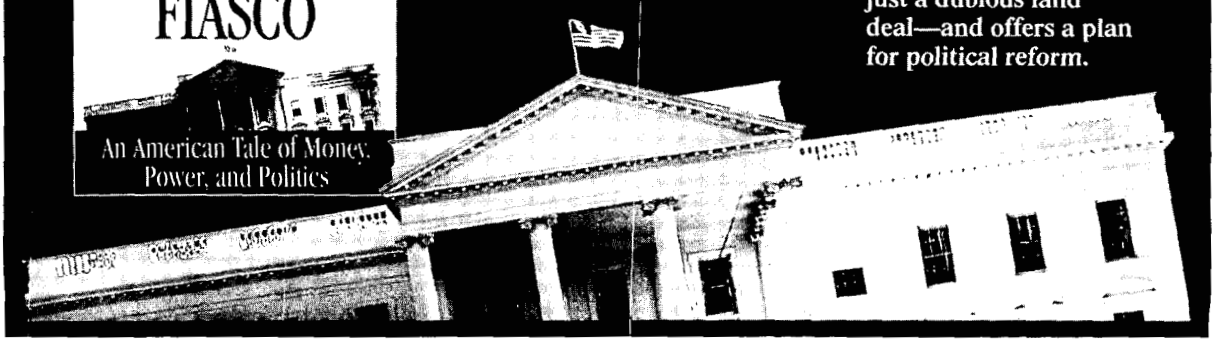

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Letters

The Ickes Files

The recent article by William McGowan ["The Mob and the Deputy Chief of Staff," July/August] is riddled with numerous falsehoods, errors, omissions, and distortions. Chief among these is the false charge that I and my firm undertook improper or possibly illegal activity on behalf of Local 100 of the Hotel Employees and Restaurant Employees International Union, AFL-CIO, and the unfair innuendo of the title that I was somehow tied to organized crime. These are outrageous and unfounded allegations.

As the court-appointed investigator who looked into all the facts surrounding our representation of the union concluded, there was "no evidence of criminal misconduct on the part of Harold Ickes or [my firm] Meyer, Suozzi, English & Klein, P.C. . . ." nor any basis for any other claims against us. Not surprisingly, your reporter chose to minimize the findings of the court-appointed investigator in favor of misleading and biased speculation provided to him by an individual who made money litigating against myself and the union. At bottom, the article is based on the notion—antithetical to our legal system—that the mere fact that I and my firm represented a union and its members in more than 1,800 arbitrations and proceedings before the National Labor Relations Board taints me with the charge of "mob," along with my client.

Your reporter ignored facts that were called to his attention concerning the investigation into Mayor Dinkins' transfer of stock to his son; namely, the fact that the prosecutor who investigated this matter advised in writing that I was never a target of that investigation. Indeed, the special counsel for the New York City Department of Investigation, who also investigated that matter, didn't think it necessary to call me as a witness or to mention me in his report.

Given the space, I could spend more time detailing many other inaccuracies in the article, big and small. The author does not even get my name right or the simplest details of my personal history. Some of the errors were even comical; as when my two former partners, one a lifelong Republican, and the other a resident of Harlem, were both anointed by the author—falsely, in each case—as Chairmen of the Democratic Party in Suffolk County, Long Island, where Democrats are something of an endangered species.

Suffice it to say, however, that I hope the next time your publication chooses to do an article making such serious allegations, you will find a reporter who will pay more attention to obtaining a full, fair, and accurate record of the underlying facts.

Harold Ickes
Washington, D.C.

The author replies: It is Harold Ickes' cynical response, and not my recent article about him, that is full of omissions and distortions. At bottom my piece is not about Ickes' work before the National Labor Relations Board on behalf of his client, Local 100 of the Hotel and Restaurant Workers International Union. It is about a wealthy, politically prominent lawyer who continued to represent this union for many years in the face of obvious signs that it was controlled by one of the most vicious organized crime syndicates in the country.

Fact: the mob-related felony conviction in the seventies of Anthony "Chickie" Amodeo, the union's president. Fact: the felony racketeering conviction of the union's vice president, John DeRoss, in the mid-eighties. Fact: federal wiretap evidence at DeRoss' trial in which Paul Castellano, then-leader of the Gambino family, is overheard in a conversation that clearly suggests the union's Mafia ties. Fact: a federal racketeering complaint that charged that officers of Local 100 had worked with organized crime "to reap enormous profits at the expense of union membership," and which culminated in a 1992 consent decree under which the union was taken over by federal trustees and its officers agreed to desist from union work for the rest of their lives.

Of course, lawyers should not be barred from representing underworld figures and the legitimate enterprises they control. The question is whether a lawyer who does so should be rewarded with the privilege of being named a top advisor to the president of the United States.

True enough, the court-appointed investigator who examined Mr. Ickes' work for the union did conclude that there was "no evidence of criminal misconduct on the part of Harold Ickes or [his firm] Meyer, Suozzi, English & Klein." But according to this investigator, whom I interviewed at length, this inquiry did not delve into the question of whether Ickes had any *knowledge* of wrongdoing, a ques-

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tion that is still open. There is very little chance that a savvy lawyer like Ickes did not know what his clients were up to.

Mr. Ickes' contention that I favored "misleading and biased speculation" provided to me "by an individual who made money litigating against myself and the union" is both misleading and snide. The lawyer in question, David Wright, made money-winning settlements for members of the union whose cases Ickes, for dubious reasons, refused to handle. Many of them were waiters, dishwashers and busboys who spoke little English—precisely the class of people for whom labor lawyers are supposed to fight.

I never said that Ickes was a target of the investigation into Mayor Dinkins' questionable stock transfer to his son. What I did say was that Ickes stonewalled in an action that was deemed a significant breach of the law, even if it was never prosecuted.

Mr. Ickes complains that "the author does not even get my name right." I am sorry that I referred to him as Harold Ickes, Jr. instead of his preferred moniker, Harold M. Ickes. I am also sorry that I mistakenly referred to one of his former partners as a former Suffolk County Democratic Party boss and that a typo, combined with a copy editing error, made it look as if I were saying that Basil Patterson, another partner of Ickes, was a party boss from Long Island too. But these minor errors should not detract from the piece's main point: That, for a senior White House official, Harold Ickes seems embarrassingly blind to serious ethical issues.

Jury Call

I had completed two weeks of jury duty myself when your issue arrived, so I was keenly interested in Daniel Franklin's article ["The Menendez Quandary," July/August]. I found it excellent and quite accurate, based on my own experience. But I wanted to expand on one point, and take one small issue with another.

It's distressingly true that juries are drawn from an all-too-small segment of the population. Oregon, unlike other states, has few statutory exemptions that confer an automatic "out" for potential jurors. Yet the effect is quite similar. In Multnomah County, where Portland is located and 25 percent of the population resides, only one in nine potential jurors who receive a summons report for duty. Many don't even bother to call, and most are excused for "hardship" reasons—e.g., they can't afford time off from work. Jurors here get all of $10 a day (plus six cents per mile), and many businesses will not cover a person's salary.

Jurors drawn from just a small slice of the general population cause another problem that Franklin didn't discuss, but which I've thought about a lot after sitting through two weeks of testimony and deliberations. The vast majority of citizens who don't serve as jurors will likely only have one kind of direct experience with the justice system—as victims of a crime. All other knowledge will come secondhand—through friends, colleagues, movies, and media accounts.

I do take issue with Franklin's point about drawing jurors exclusively from voter registration rolls. In my capacity as Oregon's chief elections officer, I've discovered that a major reason that many people don't register to vote is out of the mistaken belief this will prevent their being called to jury duty. I say "mistaken" because several years ago Oregon changed its laws to make adult holders of drivers licenses eligible for jury duty. If our goal is to broaden service as widely as possible, we shouldn't just strive to eliminate prejudices and tighten up exemptions—we should truly reach out to as many citizens as possible.

Phil Keisling
Oregon Secretary of State
Portland, Oregon

Correction

Last month's Monthly Journalism Award citation incorrectly identified Thomas Omestad's publication. It is *Foreign Policy*.

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Tilting at Windmills

It's time to revive our Only in California Department. The curriculum offered by More University, located in Lafayette, east of San Francisco, includes courses called Basic Hexing and Basic Sensuality. The university's degrees are approved by the state. They include a doctorate in philosophy and sensuality which costs about $40,000 to obtain. . . .

Everyone in journalism should be shamed by the study for the Center for Media and Public Affairs that found a nearly 75 percent tilt against Clinton on the network news. Robert Lichter, the center's director, explains that Clinton "had the misfortune of being president at the dawning of an age that combines attack-dog journalism with tabloid news." *The Washington Post*'s Jonathan Yardley adds that reporters are romantics who are disappointed that Clinton isn't John Kennedy and recalls their being similarly let down by Jimmy Carter. I remember the same thing happening to Harry Truman. Reporters were angry because he wasn't FDR.

The down-to-earth unpretentiousness that Clinton, Carter, and Truman share seems mostly laudable to me. But it does tend to ignore a great need of the American people, which is that they want to look up to their president; they want him to be a man who can inspire with words like "Ask not" or "The only thing we have to fear." They certainly don't want him to talk about his underwear or what he did on the astroturf of his pick-up truck. So in this sense it isn't hypocritical for a leader to be concerned with how he looks. It is right to expect a decent measure of dignity in a president who may have to ask others to sacrifice, sometimes even their lives, for the common good. . . .

Did you know that we're wasting money on security guards for people like the secretary of Agriculture? Mike Espy spent $20,000 to send four of his security guards to that hotbed of lawlessness and violence known as Switzerland. Hazel O'Leary, the secretary of Energy, spent $8,000 to have her security guards accompany her to Paris. Alan Greenspan's $400,000-a-year security team even goes to the movies with him. One of Donna Shalala's guards was ordered to wash her car. Why on earth do these people need guards? The last attempt on the life of a Cabinet officer, reports Ruth Larson of *The Washington Times*, to whom, along with the CBS "Evening News," I am indebted for these facts, "occurred in 1865 when Secretary of State William Henry Seward was wounded in his home on the night that President Lincoln was killed." . . .

Chuck Robb may not be your dream of what a senator should be, but I urge you to contribute to his campaign anyway. (And while you've got your checkbook handy, please help Harris Wofford, one of our favorite senators.) Robb's opponent, Oliver North, could be a dangerous demagogue. He lies with such ease and apparent sincerity and appeals to deep emotions in an utterly shameless way. Take this passage from a recent fundraising letter:

"When the bullets start coming, it's important who is in the foxhole with you. That person can give you the support, encouragement, and cover you need to survive and win. The person I want in my foxhole this election is you."

These are words that are sacred in the tradition of real fighting men. They honor a rare combination of reliability and courage. To use them cheaply to raise campaign funds is contemptible. . . .

In talking with people in the White House about the administration's ups and downs, I have been amazed at how insightful they usually are. So what's wrong with communication inside the White House? Do these people not talk to the president enough? Or, if they do talk to Clinton, do they fail to tell him what they really think? Or are they ignored? For example, the errors the president, Mrs. Clinton, and George Stephanopoulos were making in regard to press relations seem to have been understood as such for a long time by practically everyone in the White House

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except the offending parties. Yet the errors continued.

One reason may be a shortage of courage on the part of the staff. Another may be the Clintons' bad tempers, which may frighten potential bearers of unhappy tidings. As one who has from time to time blown up at subordinates, my advice to the Clintons in this matter is given as one sinner to another. The advice is: Praise those who have spoken up and never let it be said you fired or injured the career of a subordinate because he told you the truth, however unpleasant. . . .

Those who are torn between the arguments for and against school prayer may find South Carolina's solution to the problem appealing. It's a minute of silence during which students can pray, reflect, or think about the baseball strike. So a religious practice is not forced on the students, but an opportunity is offered for it or for contemplation of a secular nature. And who can object to a moment of quiet amid the bedlam of modern life? . . .

This item belongs in a wholly owned subsidiary of our Only in California Department called Only in Hollywood. It's from the August 9 edition of *Daily Variety*:

"Perhaps the most unusual script in active development at a major studio is 'Sacred Cows,' a satire about a U.S. president who's blackmailed after he's caught in the clinches with a cow. Does Steven Spielberg have a sacred cow of his own, and did it cause him to back out of producing the MGM pic for fear it would offend his friend Bill Clinton?

"[T]here are parallels between the protagonist and the prexy. Sam Parr is a liberal Democrat in his 60s whose reelection campaign is dogged by incessant rumors that he's unable to turn down a good-looking woman. His troubles mounting, the prexy retreats to his brother's farm and falls asleep one night drunk in the barn. Still inebriated when he awakens, he spies an unsuspecting bovine and does the unthinkable—unaware that he's created a photo-op for the rightwingers shadowing him."

When Spielberg withdrew from the project, Joe Eszterhas, the scriptwriter, said, "I don't understand it. I voted for Bill Clinton. The script is about a president who has sex with a cow and I'm sure Bill Clinton hasn't done that." . . .

I have an idea for a new profession. Let's call it Objective Repair Consulting. The problem it would address is the one every homeowner confronts when the roof is leaking, the furnace goes on the blink, or some other part of the house needs fixing. What you want to know is exactly what needs to be done and how much it should cost.

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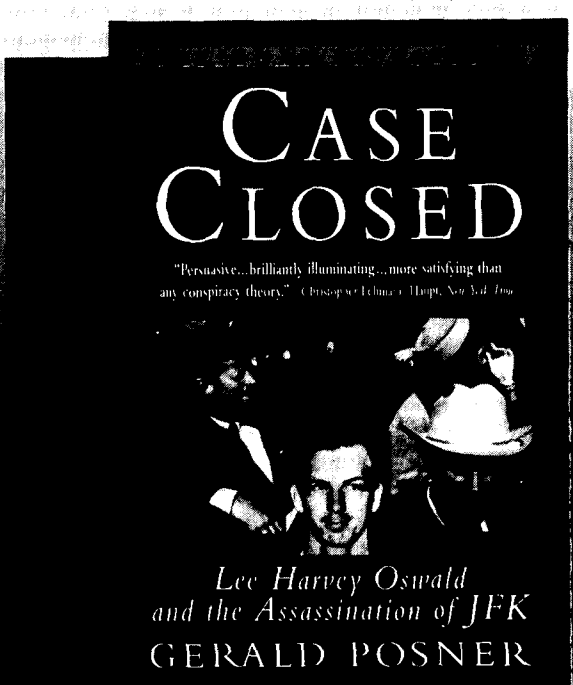

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But Harry Homeowner's only source of information is a contractor who wants to do the repair for the greatest profit he can get and who will therefore tend to provide an estimate very much on the steep side. And even if Harry gets competing bids from other contractors, the "competition" is likely to consist of only slight shavings of the high side estimate.

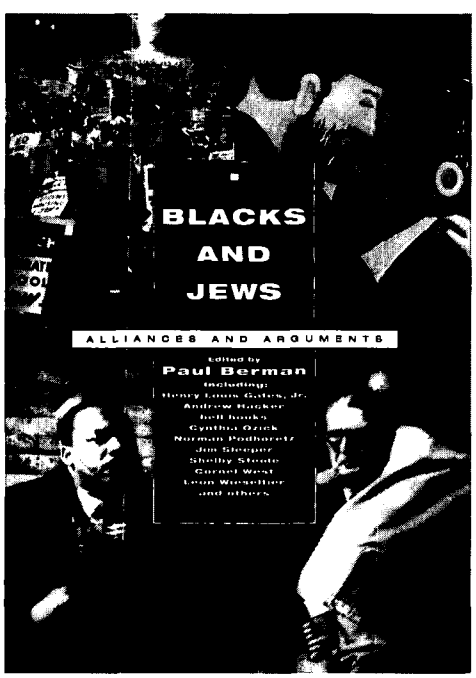
Now what if the people who assessed the need and the cost were not the suppliers of the repair services? They would then have no interest in inflating the bill you would pay someone else. And you would have a realistic basis from which to negotiate with the repairman, as when you use *Consumer Reports* to find out the real cost of a car before you go negotiate with the dealer. . . .

If you believe that there really is equal justice in this country, you might consider that the fee for the kind of celebrity lawyer available to a rich individual charged with capital murder starts around $500,000, according to a recent article in *The New York Times*. In Alabama a poor person charged with capital murder can count on the state paying a *maximum* fee of $1,000 to his defense. . . .

The insanity of Whitewater got more insane this summer. The replacement of special prosecutor Robert Fiske and the subsequent departure of more than half of his staff attorneys mean that his replacement, Kenneth Starr, will practically be starting all over again. And it will certainly take Starr longer because he is not an experienced prosecutor and therefore lacks the networks of friends, acquaintances, and former associates whom he can rely on to recommend the right assistants.

Even worse is the choice of Starr, which creates an appearance problem infinitely worse than the one that the three-judge court said Fiske had. Starr not only served in the Reagan and Bush administrations, he has given $6,000 to Republican candidates in just the last year. Since he's not rich or a big corporation, this amount is strong evidence that he wants to be a serious player in Republican politics. And Judge Sentelle, the head of the panel that appointed Starr, not only had that suspicious lunch with Jesse Helms, the man responsible for his appointment, and Lauch Faircloth, the leader of the dump Fiske movement among Senate Republicans, but his two best-known decisions as a federal judge overturned the convictions of Oliver North and John Poindexter.

With such antecedents, it is hard to see how Starr's investigation can have any credibility at all. But even if it has credibility, I'm still confident it will turn out to be a waste of time. Why investigate a president's conduct before he became president? The Watergate and Iran-*contra* investigations concerned the actions of sitting presidents. At best Whitewater is going to show that, as governor and first lady of Arkansas, Bill Clinton and his wife had favors done for them and did favors for others that may not have been in the pristine spirit of the Vermont town meeting but were neither felonious nor the kind of grave breach of trust that would disqualify them from the White House. What we'll see is a parade of minor embarrassments for the Clintons such as Hillary's unusual success investing in commodities, or the coincidence of bank loans to Clinton and his campaign from banks whose officials either held or soon received appointments to positions in the government of



"An intricate conversation, alternately pleasant, firm, angry, and venomous."

This is how Paul Berman characterizes the exchanges between black and Jewish writers over the past three decades. In this anthology, he has gathered 19 eloquent and provocative essays —by Henry Louis Gates, Jr., Andrew Hacker, James Baldwin, Norman Podhoretz, bell hooks, Leon Wieseltier and others— to cast revealing light on the past and future of race relations in America.

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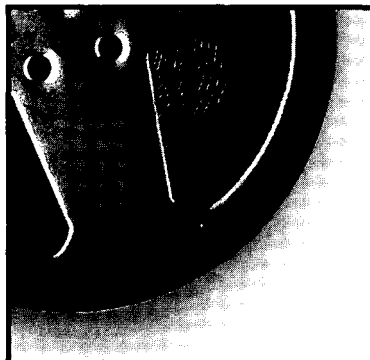
Arkansas. Why not leave these embarrassments to the press to uncover? Why involve the prosecutorial majesty of the government of the United States in the trivia of Arkansas politics? . . .

Two hundred and one District of Columbia police officers have been arrested since 1989 on charges ranging from shoplifting to forgery to rape and murder, according to a recent article by *The Washington Post*'s Keith A. Harriston and Mary Pat Flaherty. One hundred and eighty-five of these officers are so tainted by their own criminal problems that prosecutors can't put them on the witness stand, a problem that has in turn led to the dismissal of cases and to accused criminals being set free or allowed to plea bargain for reduced charges. . . .

We all know how members of Congress abuse their free mailing privileges by sending out newsletters by the ton, newsletters that have no other purpose than to help them get reelected. But are you aware that the same practice is carried out at the state level? In Wisconsin, for example, it got so bad that reformers were able to enact a requirement that in an election year no free mail should be sent out after May. But the members of the legislature rose almost as one to meet this challenge. According to the *Milwaukee Sentinel*, 14 of the 17 state senators facing reelection this fall had large shipments of mail delivered in their districts at state expense. Senator Dale W. Schultz had 207 sacks of mail delivered in May alone, a total that was almost equalled by Senator David A. Zien, whose staff had managed to lug 188 sacks to the post office before the end of the month. . . .



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— *The Washington Post Book World*

"**Engrossing...** anyone who needs to be reminded that Watergate was more than a 'third-rate burglary' should read Emery's retelling of the scandal that drove Nixon from office."
— *Publishers Weekly*

Watch the "riveting"* tie-in-series, "Watergate", on the Discovery Channel!

* *The Wall Street Journal*

TIMES BOOKS

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Another good story from the *Sentinel* reminds us that if police departments such as the District of Columbia's have a disturbingly high number of bad apples in the ranks, the situation may be even worse in the realm of private security firms whose officers are expected to outnumber police two to one by the year 2000. There are no state or federal training requirements for these people, yet they dress up just like regular cops and are often turned to by the public for help and relied on for protection.

People can work as private security guards even if they've been convicted of murder or rape. The *Sentinel* actually found five convicts who were hired as security guards while on work-release programs. . . .

In my youth, I played tennis and golf. I abandoned the latter in part because my wood game had headed south and my putting game had never existed. But another reason for forsaking golf was that it is a miserable game for those who have a tendency toward self-reproach. In tennis a bad shot is immediately followed by a chance to do better. In golf, there is the walk down the fairway or, worse, an often lengthy search for your ball in the rough during which you berate yourself for not having held your head down or squared your shoulders or sinned in any of the myriad other ways that cause the meeting of ball and club to have unhappy results.

If there are others out there who are by temperament and talent ill-suited for the game and need an excuse to get out, I have one for you. Golf may be hazardous to your health. I know you think all that fresh air and green grass must be good for you. But it seems that what keeps the grass green may be very bad for you.

According to a 1991 study conducted by New York's attorney general reported in *The Wall Street Journal* by Timothy Noah—he has an article on another subject in this issue; see page 24—the golf courses in the Long Island area use 18 pounds of pesticide per treated acre. This is seven times as much as the average farmer uses. The impact on the health at least of those responsible for the care of the course does not seem salutary. The Golf Superintendents Association has found that its members have high levels of cancer of the lung, brain, large intestine, prostate, and non-Hodgkin's lymphoma. So the next time you hit a ball into the water hazard next to the 9th hole, just throw your clubs in after it and walk away, free at last to worry about something else besides the follow-through on your swing. . . .

Dwayne Andreas is to political finance what Mercedes De Acosta was to celebrity sex. A lesbian, she had affairs with many famous women, including Greta Garbo and the notoriously active bisexual, Marlene Dietrich, who connected De Acosta to people of every romantic persuasion. Truman Capote called her the best card to hold in his International Daisy Chain game because through her "you could get to anyone—from Cardinal Spellman to the Duchess of Windsor."

Andreas can get to anyone in politics because he has given to everyone from Richard Nixon to Bill Clinton. Recently he chaired a presidential fund raising dinner for the Democrats, personally contributing $100,000. While Andreas always shares his bounty with both parties, he tends to favor the party in power. During the last five years the Republicans were in the White House, they got $1.18 million from Andreas while the Democrats had to settle for $326,000. But in just the first 13 months of the Clinton administration, the Democrats got $206, 500 while the Republicans received only a measly $47,500. Andreas' generosity has not gone unrewarded. Just a few weeks after the presidential dinner, the EPA made a ruling that gave major benefits to his company, Archer Daniels Midland. It required that one-tenth of all gasoline sold in the United States after 1994 contain corn-based ethanol. ADM makes 60 percent of the ethanol produced in the United States. . . .

—*Charles Peters*

Reporter-Editor Wanted

The Washington Monthly will soon have an opening for a reporter-editor. Desirable qualifications include practical experience working in or writing about politics and government. More important are intelligence, humor, and the willingness to work for low pay. Applications should be accompanied by two references and writing samples (unpublished works are fine) that demonstrate fact-gathering and analytical ability.

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Has The ACLU Lost Its Mind?

By taking on truly bizarre cases—from defending tobacco companies to child molesters—the old left's favorite interest group is undermining its reputation and cheapening free speech

BY AMITAI ETZIONI

Foes of the American Civil Liberties Union believe it has veered off to the left; friends argue that friends should not criticize a beleaguered champion of the freedom of speech. But only those who keep close tabs realize that the ACLU has gone silly.

The ACLU used to play an important role in our nation, particularly in the protection and expansion of First Amendment rights. Many of the principles for which it fought are now taken for granted. Prior to 1920, the year the ACLU was founded, the Supreme Court had never upheld a free speech claim under the First Amendment. In its first year, the ACLU helped gain the release of hundreds of prisoners whose only crime had been that they spoke out against World War I. During World War II, the ACLU provided one of the few voices that condemned the relocation of Japanese-Americans to internment camps. In the fifties, the ACLU was a leader in the battle against the McCarthy era "loyalty oaths." Even these days, occasionally it still gets the job right. A case in point is the ACLU endeavor to protect the jobs of whistleblowers.

But even ACLU aficionados did a double take when they read that the organization had marshaled its legal big guns to protect the rights of lawyers to file misleading bills. The case involved none other than Senator Alfonse D'Amato's brother Armand, who was convicted of fraud in a plan to influence the senator. Armand collected money from a corporation by billing it for legal services that were never performed. In exchange, Armand promised the corporation access to Senator D'Amato. Several bar associations attacked the ruling on the flimsy grounds that such a billing practice is common among lawyers and that it is protected by client-lawyer privilege. When New York ACLU representative Arthur Eisenberg was asked what the hell possessed the ACLU to side with Armand, he explained: The ACLU is concerned that D'Amato would be convicted, not of influence peddling, but under a Federal mail fraud statute, and the ACLU believes the wording of these statutes is not sufficiently precise. Got it?

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When the new mayor of New York City, Rudolph Giuliani, tried to get kids back into school by drawing on new community police officers to help locate truants, the ACLU protested. The executive director of the New York Civil Liberties Union, Norman Siegel, told a reporter that "the cops see these kids as criminals; educators see them as consumers of school services. You have two different views, [and] this is not the way to go." It is far from self-evident what is wrong if, indeed, it is the case that police and teachers see things differently; I bet that the fire department and sanitation officers look at the same kids in still different ways. Actually, the facts are that the police, far from arresting the truants, simply shepherd them to schools, where everyone agrees they belong.

Some recent ACLU peculiarities have explanations, but you will not find them in legal textbooks. The ACLU is fighting to preserve the right of the tobacco industry to advertise cigarettes. The ACLU argues that all it is doing is sticking to its traditional defense of commercial free speech, a fundamental part of the First Amendment. Legal scholars may well raise some questions about the standing of commercial speech as distinct from political and social speech. But all in the know will raise at least one eyebrow when they learn that the ACLU also fought a congressional bill that would have cut the tax deductibility of tobacco promotions. And they'll raise the other eyebrow—and much more—when they learn that the ACLU received more than $500,000 in contributions from the tobacco industry—and did not disclose this to the public or its members. If some other group, say, one that favors a ban on pornography, pocketed $500,000 on the q.t. from, say, the Christian Coalition, you can bet the ACLU would be in its face.

To be fair, the ACLU is at least consistent. While Common Cause, People for The American Way, Congress Watch, The Communitarian Network, and practically all other reform-minded groups strongly oppose the unlimited flow of private money into the coffers of elected officials in the form of campaign contributions to politicians, the ACLU maintains that the flow should go on uninhibited on the ground that "money is speech." In effect, it accepts and legitimizes the self-serving arguments of special interest groups that use PACs to sway legislators—that this money gives citizens opportunities to participate in democratic politics. The fact is that contributions are collected from individuals who are *not allowed* to designate which politician will receive the PAC money. Funds are granted to whomever is favored by the *managers* of PAC associations (such as the National Rifle Association, various banks, and several labor unions). As a rule, contributors to PACs are not told even after the fact who got their bucks. Some democratic participation.

But more importantly, the ACLU has never been able to explain satisfactorily how its position in support of unbounded money bags is compatible with a free give-and-take of ideas. Private money in politics is often compared to a person who brings a huge, expensive amplifier to a town meeting and drowns out everybody else. Money buys consultants, studies of the hidden crevices of the public's mind, and massive TV ads. Candidates without deep pockets do poorly in elections dominated by money, no matter what the content of their messages. Champions of free speech should seek to ensure that all are able to speak freely.

When it comes to metal detectors in schools, the ACLU is truly daffy. The detectors are a measure of the desperation of schools that face, on an average day, 135,000 children who come to school with loaded guns. While the detectors do not solve the problem, and clearly much more needs to be done to stem violence, screening reduces gun fatalities. The opposition to this measure is led by the Southern California chapter of the ACLU, which opposes not merely the gates but also the expulsion of students caught carrying guns. Expulsions, it argues, may consign students "to a life even more disadvantaged than it might have been otherwise." In other words, it's better for all students to learn in fear of being shot than to expel the ones carrying guns.

Even if the ACLU has a good case, you can rest assured that it will find a way to ride it *ad absurdum.* Its protection of the right of youngsters to wear T-shirts that display social and political slogans is a sound part of its protection of free speech. However, its active opposition to

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dress codes in schools and shopping malls is stretching matters too far. The ACLU's regional director in Texas questioned the constitutionality of dress codes imposed by malls that discourage certain clothing items favored by gang members, such as bandannas and baggy pants. The ACLU's argument, absurd as it sounds, is that baggy pants and bandannas are forms of political expression. Personally, I can't see much political content in any kind of pants.

President Clinton proudly waved in front of the nation the symbol of his universal health care plan—a national health security card. The card could facilitate compilation of national statistics on the uses of health care resources, vital if waste is to be curbed. It could also allow potential patients to carry in their pockets their medical histories and other relevant information on the cards' magnetic strips, *to be "read" by whomever the cardholders choose.*

You may know that the ACLU is fighting for the rights of cigarette companies to advertise their products. What you may not know is that the group has accepted more than $500,000 in contributions from the tobacco industry.

Not so fast, says the ACLU. Jan Lori Goldman, head of the organization's project on privacy and technology, explains: "The problem is that the databases are enticing. People want to use them for other purposes." What are these other nefarious purposes? Seeking deadbeat dads, university graduates who welshed on their student loans, and illegal immigrants. But these people violated the law, and the public is clearly in need and fully entitled to find them and help ensure that they will make amends (pay up, ship out, etc.). It's far from evident why such applications of a database are troubling to the point that we should forgo the health care card. Moreover, would anybody be better off—other than maybe computer staffers—if we apprehended these offenders by drawing on a separate database for each subgroup instead of a single comprehensive database?

The ACLU recently honed its long-standing talent to find, in a world full of the downtrodden, the most bizarre cases. In New York City, a teacher is openly advocating having sex with young boys. He is a leader of NAMBLA (North American Man/Boy Love Association), a national association whose slogan is "sex after eight is too late." And the reference is not to eight in the evening. The teacher has been suspended until hearings are completed about his future assignment; the ACLU argues that his right to speak is being violated. However, even the ACLU acknowledges that one may not shout fire in a crowded theater (though it often adds, "unless there really is a fire"). Presumably the reason the ACLU is willing to tolerate an exception to the First Amendment is that the "proximity" of the cause (shouting) to public harm (being trampled) is closer than in the teacher's classroom.

But this is far from self-evident. Just as not every time one shouts fire do scared crowds overrun people, so not every time a teacher advocates molesting young children are they actually abused. However, the probability may well be just as high and the crime at least as hideous. Unless you believe that the only value we care about is free speech, we are entitled to wonder whether parents should be expected to leave their children with an advocate of pedophilia. It's like allowing those who advocate arson to be in charge of fire safety in schools. Meanwhile, if the ACLU tries, it may be able to find at least somewhat more worthy causes to assign to its lawyers.

The ACLU trivializes rights and adds to litigiousness when it pursues many of these cases. Our liberties would be better protected if the ACLU would focus its zeal where it matters, rather than on drummed up, far out, or indefensible cases. □

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The Five Dumbest Supreme Court Decisions

A stroll through the Brethren's Hall of Shame

BY DANIEL FRANKLIN

Nathan Goodman's truck was only eleven-and-a-half feet from the railroad tracks when he first saw the oncoming train. An overhanging tool shed had obstructed the view of the railroad tracks and although he slammed on his brakes, there was nothing he could do to prevent crashing into the train. Luckily, he was only injured.

It was 1927, and America was just beginning to realize, perhaps not as profoundly as Goodman, that the country was not designed for the automobile driver. Goodman sued the Baltimore & Ohio Railroad Company and won, but the railroad appealed the decision to the Supreme Court. Justice Oliver Wendell Holmes, writing for a unanimous Court, stated that to prevent circumstances when "the accidental feelings of the jury" could decide personal injury claims, the Court needed to establish a steadfast rule by which the lower courts could decide liability.

Neither the railroad company nor the train's engineer has any responsibility to warn oncoming drivers, Holmes wrote. Rather, the burden of safety depends entirely on the driver. After all, "he knows that he must stop for the train, not the train stop for him." Therefore, Holmes concluded, any driver approaching railroad tracks must stop his car, get out, and walk up and down the tracks to make certain no train is coming before he can go on his way.

It isn't often that it can be said that a unanimous Supreme Court got something 100 percent wrong, especially when the driving force behind the error was one of the greatest legal minds in this country's history. How could Holmes have been so backward and blind? It probably had something to do with the fact that the good Justice had never sat behind the wheel of a car. The plight of Goodman, a professional truck driver, could not have been more alien to him.

Holmes' decision was overturned seven years later. Nonetheless, it provides a textbook example of how smart justices can come up with dizzyingly dumb decisions. Take *Bradwell v. Illinois*, in 1873, when the Court ruled that the State of Illinois could bar women from becoming lawyers because, they reasoned, God made women inherently inferior; or *Dennis v. U.S.*, in 1950, in which Smith Act prose-

Research assistance provided by Alison McCready and Rachel Van Dongen.

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cutions of Communist party leaders were justified on the basis that the mere advocacy of Communist doctrine was a crime. And then, of course, there are the truly infamous: *Dred Scott*, which in the process of returning a freed slave to his owner the Court affirmed that slaves were in fact property; and *Plessy v. Ferguson*, which in 1896 affirmed segregation and facilitated Jim Crow's hold on the South for another two generations.

Even though these decisions have been overturned, the Court over the past 30 years has come up with some decisions worthy of their, to be kind, less-than-perfect predecessors. Here are a few inane decisions that are the law of the land and shape—for the worse—the way we live today.

Bowers v. Hardwick, 1986

Until the last minute, Justice Lewis Powell wasn't sure on which side he would vote. The case before the Court would decide whether Georgia's statute outlawing sodomy between consenting adults was unconstitutional. As the justices debated the case in conference, their opinions began to polarize and harden: Justices Burger, White, Rehnquist, and O'Connor found for Georgia, while Justices Marshall, Blackmun, Stevens, and Brennan voted to strike down the law. The vote was four to four. Powell, attempting to reconcile his respect for the right to privacy with an instinctive disgust with homosexuality, sat divided in his own mind.

Bowers v. Hardwick had begun rather innocently in the summer of 1982, when Michael Hardwick was cited for carrying an open beer bottle in public. Hardwick paid the fine, but it had not been processed before a police officer was sent to Hardwick's Atlanta home one morning to serve him a warrant. A friend of Hardwick's who had spent the night in the house let the officer in and pointed him in the direction of Hardwick's bedroom. When the officer opened the door, he saw Hardwick engaged in oral sex with another man. The officer arrested both men on the charge of sodomy, a prohibition not enforced since 1935, and brought them to the police station.

Hardwick's attorney argued that the case presented a right to privacy issue: that the choice of whom to have sex with was something beyond the state's jurisdiction. Georgia Attorney General Michael Bowers (he still holds the position) countered by arguing that the right to privacy is not guaranteed in the Constitution and that the Supreme Court would be inventing a right (as many argued it did in *Roe v. Wade*) by asserting that there was a constitutional right to homosexual sex.

Powell, who tried desperately to find some middle ground, first voted against the Georgia law, but eventually added his name to the majority opinion written by Byron White.

White's opinion is a paradigm of bluster and bigotry. It argued that homosexuality was a historical taboo, and its inherent immorality made it vulnerable to the state's prohibition. Burger's concurring opinion was even more strident: Anti-sodomy laws have "ancient roots," he wrote, dating back to the Bible and the Roman Empire (both of which, he must have known, also condoned slavery and burning witches). Referring to Blackstone's commentary on English law, he described homosexuality as "'the infamous *crime against nature*' as an offense of 'deeper malignity' than rape, a heinous act 'the very mention of which is a disgrace to human nature.'" In conclusion, he argued that protecting sodomy "would be to cast aside millennia of moral teaching."

It is a sad postscript to Bowers that Powell admitted after his retirement from the Court in 1987 that he had been wrong. During a 1990 appearance at New York University Law School, a student asked Powell to justify his vote on the case. Almost dismissively, he said, "I think I probably made a mistake in that one."

Buckley v. Valeo, 1976

The commune depicted in George Orwell's *Animal Farm* is founded on one commandment: "All animals are created equal." But the pigs, who fancy themselves the ruling species, tack on an amendment: "But some animals are more equal than others." Similar to the animals in Orwell's classic, every American citizen has the freedom of speech. But some pigs, Ross Perot

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and Michael Huffington among them, have a little more freedom than the rest of us.

Or at least that was what the Court concluded in *Buckley v. Valeo*, the decision that ruled unconstitutional any limit on the amount of money a federal candidate could spend on his campaign, whether the money is his own or donated to him, on the ground that a limit would abridge the candidate's right to free speech.

In 1974, Congress passed a set of amendments to the Federal Election Campaign Act that placed the spending limits on federal candidates. No sooner was it passed, though, that an unlikely assortment of politicians and civil libertarians, including New York Republican Senator James Buckley, presidential candidate Eugene McCarthy, and the New York Civil Liberties Union filed suit against the new law saying it restricted their political speech because, they claimed, "virtually all meaningful political communications in the modern setting involve the expenditure of money."

A U.S. Court of Appeals upheld the law, arguing that the country had a responsibility to limit the political power of the wealthy relative to the rest of the population. "It would be strange indeed," Judge J. Skelly Wright wrote, "if. . . the wealthy few could claim a constitutional guarantee to a stronger political voice than the unwealthy many because they are able to give and spend more money, and because the amount they give and spend cannot be limited."

But the Brethren didn't find it strange at all. The Court ruled that limiting a candidate's spending "reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached." In short, money is equivalent to speech, and is therefore inviolable.

But if money is speech, then limits on political contributions should also be unconstitutional. Even bribery must be allowed. "I *should* be able to give money in exchange for a vote on a particular bill," says American University law professor Jamin Raskin. "I'm only speaking. And if someone else can offer more money, he's just speaking more eloquently."

The undemocratic effect of the Court's ruling has never been more apparent than it is today. Unchecked, any candidate can dig deep into his own pocket or what he can raise from PACs to appear as a latter-day Demosthenes. Huffington, the California multimillionaire who spent $5.4 million of his own fortune to win a seat in the House of Representatives in 1992, is expected to shell out a record $25 million challenging Senator Dianne Feinstein this year. That dwarfs the previous record of $17.7 million held by Jesse Helms, who needed every penny to ward off challenger Harvey Gantt in 1990.

Helms and Huffington wouldn't be so extravagant if they didn't think it would do some good, and they're right. Candidates who outspend their opponents almost always win their elections. According to the Center for Responsive Politics, candidates in 1992 who outspent their opponents won more than 85 percent of the time. It's no wonder that campaign spending is snowballing. As one candidate spends more, his or her opponent is in turn forced to cozy up to PACs and wealthy political patrons. The price of participating in the political process climbs ever higher. Campaign spending for 1992 jumped 52 percent from two years earlier and with Ollie North and Huffington leading the way, 1994 is shaping up to be much the same. The deafening sound you hear is not the free exchange of political ideas, but the trampling of the democratic process. Oink.

Massiah v. U.S., 1964

Herald "High" Price Fahringer likes this decision a lot.

"A man has been indicted, and the government takes a confederate and induces him to go to this man and take [self-incriminating] statements. That, in its nature, is very shocking," he says.

It's no wonder he feels the way he does. Fahringer is a mob lawyer, and one of the best. He has probably handled more appeals on behalf of mobsters than any other lawyer in New York City, if not the entire country. *Massiah v. U.S* has helped him do his job on a number of occasions.

In 1958, Winston Massiah, along with several codefendants, was arrested, read his rights, arraigned and indicted on charges related to the smuggling of three-and-half pounds of cocaine into the United States. Massiah pleaded not guilty to the charges and was freed on bail.

Shortly afterwards, Massiah was discussing the case in the car of one of his codefendants, Jesse Colson. During the conversation, Massiah

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made several statements indicating that he was in fact guilty. Massiah did not know, however, that Colson was cooperating with the prosecutors and had his car bugged. A federal agent sitting in a car about a block away was listening to the entire conversation.

Massiah was convicted, but his lawyers appealed on the ground that the bug represented a violation of the defendant's right to counsel, only to have the initial conviction affirmed by an appellate court. They found a more receptive welcome from the Supreme Court.

In a six-to-three decision written by Justice Potter Stewart, the Court held that federal agents violated Massiah's Fifth Amendment right not to incriminate himself, and his Sixth Amendment right to counsel.

Sound crazy? It was, but consider the context. At the time Massiah was being considered, the Warren Court was still riding the crest of the two most important right-to-counsel decisions of the century, *Spano v. N.Y.* in 1958, and *Gideon v. Wainwright* in 1962. In *Spano*, the Court reversed a murder conviction that was based on a confession obtained after eight hours of intense police interrogation. *Gideon*, immortalized by Anthony Lewis' book *Gideon's Trumpet*, involved a crook who had broken into a pool hall. The judge in the case denied Clarence Gideon's requests for an attorney, forcing the nearly illiterate man to defend himself. Gideon was subsequently convicted, but had it overturned after he appealed to the Court in a hand-written note describing his situation.

The two precedents are used as the foundation of Stewart's decision in *Massiah*, but you'd be hard-pressed to find similarities between the cases. First of all, Massiah was never denied counsel. He had his own attorney, and the meetings between the two were not obstructed or spied upon by federal agents in any way. At the time of the "interrogation" (as Stewart put it) Massiah had every opportunity to have his attorney with him; he simply chose not to.

The claims that Massiah should be protected under the Fifth Amendment are equally absurd. The Fifth Amendment states that a person cannot be compelled to make self-incriminating statements. But there was no threat of violence when Massiah made his statements; he made them because they were true. And the federal agents didn't compel Massiah to make them. They just made sure they were there when he did.

Massiah represents yet another obstacle to the police's efforts to convict criminals. Only one-third of reported violent crimes end with the perpetrator convicted. The rights of the accused are in place to protect the defendant from being railroaded by overzealous or outright corrupt police and prosecutors. The Warren Court, however, used these rights to handcuff police and prosecutors to the point where a criminal can reasonably expect never to see the inside of a prison cell.

DeShaney v. Winnebago County, 1989

When the Wisconsin social worker assigned to the case of Joshua DeShaney heard he was in a life-threatening coma, she said, "I just knew the phone would ring some day and Joshua would be dead."

It's not surprising she had this premonition. Anybody who knew about Joshua's father's repeated and vicious beatings of the four-year-old could have come to the same conclusion. What *is* surprising is that during the two years when the caseworker had solid evidence of child abuse, she did nothing to stop it.

In January 1992, Randy DeShaney's second ex-wife (Joshua's stepmother), reported to the police that her ex-husband beat the boy regularly. The report was referred to the Wisconsin Department of Social Services, which handles all accusations of child abuse. In an interview with a social worker, Mr. DeShaney denied abusing his son, and no action was taken. One year later, Joshua was again admitted to a hospital with suspicious bruises and abrasions. This time, the hospital delayed giving Joshua back into the custody of his father and convened a panel of social workers, a pediatrician, a psychologist, a police officer, and the Winnebago County lawyer to consider the immediate danger to Joshua. Despite the unexplained injuries and DeShaney's ex-wife's charge, they decided that there was not enough evidence to take Joshua away from his father and returned the boy to his custody.

A month later, Joshua was again admitted to a hospital. No legal action was taken, but the caseworker began to make regular calls on the DeShaney household, noting on several occasions bruises, abrasions, and injuries that would indicate child abuse. That November, Joshua was

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again admitted to a hospital, again inspected by the caseworker, and again returned to his father's custody. Five months later, the caseworker received the call she had been expecting all along. Only Joshua was not dead, just comatose. The damage to his brain was so severe that he is expected to spend the rest of his life in a home for the severely mentally retarded.

Joshua's mother took the case to court on behalf of her son, claiming that the Wisconsin DSS was responsible for damages. She lost the case in a U.S. District Court, appealed to a Court of Appeals, and lost again. She finally appealed to the Supreme Court, where she lost one last time. Wrote Chief Justice Rehnquist: "[N]othing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors."

But the state, through the DSS social worker, did indeed have a responsibility to remove Joshua from his father's custody. Wisconsin prescribes clear duties for the DSS. All reports of possible child abuse are supposed to be directed to the DSS caseworker. Even when Randy DeShaney's second wife reported to the police that her husband was abusing Joshua, the police, rather than arresting Randy, called the DSS. In cases of child abuse, then, the DSS assumes the role held by a police department, and therefore has the same responsibilities to protect those under its jurisdiction as the police.

As Justice Brennan's dissent, joined by Marshall and Blackmun, points out, "when a State has —'by word and by deed'. . .—announced an intention to protect a certain class of citizens and has before it facts that would trigger protection under the applicable state law, the Constitution imposes upon the State an affirmative duty of protection"—a duty the DSS did not fulfill.

Rehnquist's decision has built a nearly insurmountable barrier to suing government officials on the ground of negligence. According to the logic in his decision, police officers are not required to stop crimes in progress, nor are firemen responsible to put out fires. Most potential negligence suits against government officials aren't even filed because *DeShaney* makes the government virtually unaccountable for their mistakes. Justice Blackmun, in a separate dissent, exclaimed "Poor Joshua!" He very well could have included the rest of us as well.

Elrod v. Burns, 1976, and Branti v. Finkel, 1980

DeShaney made it nearly impossible to sue government workers when they make mistakes. Protecting them even further, *Elrod* and *Branti* make it nearly impossible to fire them as well. Together, *Elrod* and *Branti* strike at the heart of an essential element in American democracy—political patronage.

The facts of the cases are simple. In the first, Richard Elrod, a Democrat, replaced Joseph Woods, a Republican, as sheriff of Cook County, Illinois. As had been done for decades, the new sheriff fired his predecessor's political appointees and replaced them with his own. In *Branti* there was a similar scenario: The Rockland County (New York) public defender, Peter Branti, a Democrat, refused to reappoint assistant public defenders Aaron Finkel and Alan Tabakman, who were appointed by Branti's Republican predecessor. In each case, the Republican political appointees filed suit, claiming that firing them solely on the grounds of their political party affiliation violated their First Amendment rights.

In *Elrod*, the Court ruled that "nonpolicy-making, nonconfidential" employees cannot be fired for their party affiliation. In *Branti*, the Court went even further, ruling that even policy makers could be exempt from political firings if the official trying to remove them could not prove that party loyalty was required by the duties of the positions.

The immediate effect of the Court's decisions was to cement the positions of the outgoing Republican administration's political hirings. The petitioners in each case owed their jobs to the same system they attacked as unconstitutional. And given the difficulty in firing government employees, the justices—patronage hires themselves—basically gave these political appointees life terms. In other words, the Court was giving the patronage employees the same deal it has itself: get a job through politics then have it forever insulated from a turn of the political wheel. Who can blame them for trying to share the wealth? But there's a reason the framers of the Constitution gave the High Court lifetime tenure while leaving patronage in place. It's because a limited patronage system is necessary to the two-party political system. Its importance was perhaps nev-

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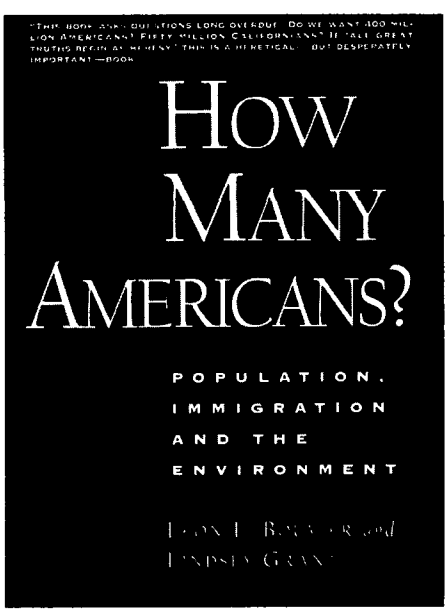
er better stated than by Tammany Hall's George Washington Plunkitt:

> First, this great and glorious country was built up by political parties; second, parties can't hold together if their workers don't get offices when they win; third, if the parties go to pieces, the government they built up must go to pieces, too; fourth then there'll be hell to pay.

Patronage actually *increases* democracy in a given political system by allowing elected officials a freer hand in choosing their staff. Every newly elected official has an idea of what government should look like and how it should work. How is that official to realize his vision if he is saddled with people hired by an administration that held a distinctly different view of government? Without the ability to hire people who share his beliefs, an elected official's efforts to streamline, or, in the current nomenclature, reinvent government, have no chance of succeeding.

The Court seems to think that it's easy for an official to shape his or her own team. In truth, bad civil servants are harder to get rid of than termites, and far more destructive. An employee can only be fired if the supervisor can prove incompetence or insubordination before a hearing board. This is no small feat; a dismissal hearing has the potential to take on the dimensions of a full civil suit. Both sides have lawyers present their case in a process that can take months to complete. Faced with the prospects of these dismissal hearings, administrators often decide firing an employee simply isn't worth the effort. Consequently, bad workers remain in their jobs and the government's performance suffers. The patronage system offers elected officials the chance to fully implement their plans for government with subordinates who have the same political goals.

When most people think of patronage hirings they envision a mayor giving a secretarial job to his mistress, despite the fact that she can't type. But there's no reason that the same skill standards that are in place in the civil service can't apply to patronage hirings as well. Agreement on politics can come in addition to, not instead of, professional skill.



It's Time to Face the Facts

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To be sure, a government of unregulated patronage hirings isn't much good either. It would never get anything done if every position was newly filled every four years. By the time an administration had things up and running, they would already be on their way out. Some apolitical civil servants are vital to efficient government for the sake of continuity, just as a competence-respecting patronage system is vital for an official's ability to implement his own policy. A balance between the two must be maintained.

Why could the Court only see the evils of patronage, and not its benefits? The best answer to date comes from Mickey Kaus, who noted in a 1980 *Monthly* article on *Branti* that Supreme Court justices tend to be what Oliver Wendell Holmes called Jobbists. Jobbists believe that a person can check his beliefs at the door of his office, and pick them up again on his way home. Lawyers are the ultimate Jobbists, because their fundamental duty is to protect the interests of their client, no matter what. Even if a defense attorney *knows* his client is guilty, he still has a responsibility to defend him as best he can. Enforcing that view, the Court has staunchly upheld the Hatch Act, which prohibits political activity on the part of government workers. One's political beliefs, according to the Court's formula, are reduced to the importance of, say, one's taste in literature—personally significant, but professionally irrelevant.

This leaves a bureaucracy full of workers with no other incentive than personal advancement. The notion that these people will work with as much determination as someone who feels a sense of commitment to a greater purpose is wrong. If an individual's political beliefs have no place in government, then where do they have a place?

In his dissent to *Elrod*, Powell acknowledged the theoretical attractiveness of banning political patronage, yet cautioned his colleagues against taking theory where it clearly does not belong. "[W]e deal here with a highly practical and rather fundamental element of our political system, not the theoretical abstractions of a political science seminar."

It is a warning that in one way or another applies to all the cases mentioned here. The current members of the Supreme Court would do well to remember it. □

Who's Who

Poor **Bill Clinton**. He must suspect that the Whit House press corps gets its morning line from the Republi can National Committee. It seemed for a while after Labo Day that the media tide might finally be turning in the pres ident's favor. Reporters were embarrassed by the release o a study that proved most of their stories had an anti-Clinto tilt. And *New York* magazine published a widely read arti cle defending the president by former *Washington Monthl* intern **Jacob Weisberg**. But then came Haiti, and the anti Clinton drumbeat resumed. Even the apparent success o the **Carter** mission in avoiding the bloodshed of an inva sion was only grudgingly conceded while White Hous correspondents and op-ed pundits devoted most of thei time to detailing presidential inconsistencies. . . .

Clinton's big problem in the upcoming fall elections, m political gurus tell me, is not so much that the Democrat will lose seats in Congress—perhaps as many as 30 of ther in the House—but that the Democrats who are defeated wi be replaced not by Republican moderates but by staunch ac herents of **Newt Gingrich** and **Phil Gramm.** And the fac that GOP strategist **Bill Kristol** faxes his anti-Clinton mem os not just to Republican incumbents but to House and Ser ate candidates can't be comforting to the president. . . .

Innocence is not reputed to be among **Jame Carville**'s more conspicuous traits, which leaves many c his friends suspecting that he is being less than candi when he writes in the new book he and **Mary Matali** have co-authored: "Bill Clinton did not have an affai with **Gennifer Flowers**." . . .

C.I.A. officials whose briefing sessions with Bill Clin ton have frequently been cancelled blame their difficulty i getting through to the president on **Tony Lake**, who is sai to have higher regard for the intelligence output of th State Department, where he once served. . . .

Inside the White House, **Al Gore** was a strong booste of **Jimmy Carter**'s mission to Haiti. Among those adv sors opposing the former president's trip were **Tony Lak Warren Christopher**, and **Strobe Talbott**. . . .

The conceptualizer in the national security apparatu we are told, is not **Lake**, **Christopher**, or **William Perry** but Perry's deputy, **John M. Deutch**. He is said to be hawk on such issues as the military's right to use atomi weapons in conflicts with nonnuclear powers, a doctrin we suspect many liberals don't realize is still clung to b the Pentagon. . . .

And speaking of **John Deutch**, it cannot be said that h is excessively humble; the deputy secretary of Defense ha

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Credulous Carville? . . . Hillary moves on . . . The book on Cuomo . . . The woman behind Jim Leach. . .

been spotted handing out souvenir ink pens with his autograph embossed on the side. . . .

White House insiders are wondering how **Bob Greenstein**, a social spending activist who is the new number-two at OMB, will get along with his new boss, the deficit hawk **Alice Rivlin**. When **Leon Panetta** became chief of staff, Rivlin moved up to be OMB director, and apparently the **Hillary Clinton** wing of the White House moved quickly to try to balance Rivlin's fiscal conservatism with Greenstein. . . .

Speaking of **Hillary**, what's she going to do now? Some White House aides suspect that the First Lady will take on violence as her next crusade. . . .

After a summer of worry, **Mario Cuomo** and his aides are said to be in better spirits about his reelection prospects. Polls show him running even in Nassau County, which is very Republican, and if they can hold **George Pataki**'s totals down in places like that, the governor is confident that he will pull out a fourth term . . . .

Some **Cuomo** watchers also think that there's still a chance the Hamlet of Albany might make it to the Supreme Court. There is a school of thinking that if **Clinton** is in office and **William Rehnquist** decides to retire to spend more time with his California lady friend, Cuomo could finally come to Washington. What has held him back from the Court before, insiders say, is that he wants to be Chief, not one of the eight Indians. . . .

Close observers of Capitol Hill are shaking their heads over how **Lauch Faircloth**, the junior senator from North Carolina, has emerged as a respectable anti-Clinton voice. Faircloth, you probably know, led the campaign accusing **Robert Fiske** of being in the tank with the Clintons. What you may not know, however, is that Faircloth doesn't mind being in the tank himself, only with PACs, not with presidents: He held a fundraiser for his six-years-off reelection campaign the afternoon he was first sworn in to the Senate in January 1993. . . .

Newsday has reported that **Al Gore** is leading the search party for **Warren Christopher**'s successor even as Christopher's allies busily defend him to reporters. They argue that Christopher has been moving vigorously to put his own stamp on departmental personnel, citing the promotions of **Robert Galluci**, **Charles Redman**, **Dennis Ross**, and **Richard Holbrooke**. . . .

Whitewater aficionados—yes, there are a few—are wondering why **Jean Lewis**, the RTC official in Kansas City who blew the whistle on Madison Guaranty and is thought to be a key source for **Jim Leach**, didn't show up to be a star witness at the Whitewater hearings. In a little-noticed item, *Newsweek* offers one reason: Lewis was negotiating with merchandisers to market T-shirts and bumper stickers emblazoned with the logo *B.I.T.C.H.* (short for "Boys, I'm Taking Charge Here"), and she would have doubtless been asked about that by Democrats had she testified. . . .

Why does **Larry Nichols**, the Arkansas man who narrates the vicious "Clinton Chronicles" videotape that **Jerry Falwell** peddled on his shows—reportedly selling 100,000 copies—hate the **Clintons** so? One obvious reason is that Clinton fired Nichols from the state government for making hundreds of calls on state time in support of the *contras*. Another less-known reason suggested by a friend of **Who's Who** is that about 15 years ago, Nichols was involved in a bitter custody battle with his ex-wife, and one of the lawyers the former Mrs. Nichols consulted was **Hillary Rodham Clinton**, whom Nichols reportedly believes advised her to leave the state with the couple's child. . . .

—Susan Threadgill

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The Case Against The Military Academies

West Point, Annapolis, and the Air Force Academy produce officers who are no better than those turned out by other training programs—but they cost many millions more. It's time to close them down

BY SCOTT SHUGER

Suppose that every engine in a General Motors car came from one of three GM plants. And suppose that the manufacturing cost of each of Plant A's engines is more than three times that of those made at Plant B and more than nine times those from Plant C. Further suppose that other than cost, there is no measurable difference between the engines no matter where they were made—not in their performance, nor in how long they last. Finally, imagine that Plant A is far and away the least productive of the three—it makes only a small percentage of the company's engines. Now, in order to maximize return on investment, GM should:

1) Close Plant A
2) Maintain the status quo
3) Have more Plant As

If you answered 1), you are still in the running to be the next Tom Peters. If you said 2), you probably don't subscribe to this magazine. On the other hand, if you said 3), quit reading this and call the personnel department at the Pentagon immediately. You've got what it takes to justify the continued existence of the nation's service academies.

That's because the details in this scenario are true if you substitute the words "military officers" for "engines," and "Pentagon" for "GM," and view Plant A as a service academy, Plant B as the university-affiliated Reserve Officers Training Corps (ROTC), and Plant C as the quick-and-dirty military training offered to college graduates by Officer Candidate Schools (OCS). As a means of producing military officers, a service academy is a perfect Plant A—*more expensive* (academy commissions cost about $250,000 apiece, compared to about $65,000 for those coming from ROTC and about $25,000 for those earned through OCS), *less productive* (the academies together produce only about 16 percent of all new officers, compared to 64 percent for ROTC and 20 percent for OCS), and with *no discernible difference in the results* (when compared to the other officer pipelines, Academy graduates don't outperform other officers). They don't remain on active duty significantly longer. Indeed, five of the six incum-

Scott Shuger is a contributing editor of The Washington Monthly.

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bent Joint Chiefs are not academy graduates. But in spite of this, we haven't eliminated Plant A for officers—in fact, we have *three* of them (West Point, Annapolis, and the Air Force Academy).

So here's a suggestion for downsizing the military that the Pentagon's "bottom-up review" and Al Gore's National Performance Review missed: *Abolish the service academies.* As we shrink the military, we're going to have to reduce officer slots—so why not close down the least efficient officer production lines?

Right off the bat, this move would probably result in a savings of nearly a billion dollars a year in direct operating expenses. And there would be nice little (little to government, big to you and me) additional economies: We could do away with the three prep schools the academies now run for the remedial training of applicants who haven't met admission standards (a disproportionate number of them are prospective varsity athletes). Ditto for the expense incurred when service big-shots commandeer government aircraft to fly themselves and their wives around the country to service academy football games. And there's probably a nice chunk of change to be saved in no longer needing field investigations or special boards of inquiry to look into academy cheating scandals.

The Plant A argument may seem too narrowly economic, so it's important to emphasize that there is another, *cultural* reason for doing away with the academies. Because the academies are what sociologists call "total institutions" (like prisons and monasteries) that are virtually sealed off from the rest of us, they tend to produce officers who are isolated and even alienated from the values and ideas of the general society they are sworn to defend.

For example, when Lieutenant Paula Coughlin complained to her boss, Admiral Jack Snyder, about what happened to her at the Tailhook convention, Snyder was utterly indifferent. And where did Snyder get his basic education about how to view women in the Navy? At the U.S. Naval Academy. And how about Admiral Frank Kelso, at the time the Navy's top officer, whose manipulation of the investigative and disciplinary process to conceal his own presence at the scene of the lewd behavior and sexual misconduct Coughlin reported caused the military to end up doing virtually nothing in the case? He was an Annapolis graduate, too. Irrelevant details about the admirals' pasts?—well, remember, the Naval Academy was where, in 1988, the superintendent knew just what to call an incident at his school where a female midshipman was pulled from her dorm room and handcuffed to a men's room urinal by taunting male classmates. He called it "hijinks." He didn't dismiss any of the culprits, either. And it's not just the Naval Academy—a recent General Accounting Office survey indicated that more than 90 percent of *all* service academy women experienced at least one form of sexual harassment at their school. A military *sans* academies could be expected to have fewer officers who were so tone-deaf to issues of fairness and decency.

Similarly, shutting the academies down would mean getting more officers with non-military college educations. This would be a plus because civilian curricula do a better job of developing divergent thinking and imparting knowledge of non-military subjects (such as history, economics, and computers), which are essential components of military leadership, on and off the battlefield. The technical details of particular military jobs are taught to officers after they receive their commissions anyway, so why not opt for the solid, but broader base offered by a civilian education?

And getting rid of the academies would give us the opportunity to have more slots for officers who come up from the enlisted ranks. This would be a boon because formerly enlisted officers tend to have more insight into the mind-set and actual work requirements of the troops they command. And enlisted troops find it easier to see such officers as role models—after all, they didn't come from West Point or some other fancy place; they were

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troopers once, too. (The highly-regarded Israeli military requires *all* officer candidates to have two years' prior enlisted service.) And having more officers come up from the ranks would make promotion in the military less like the frat house and more like the police department, where supervisors have to work their way up from starting positions as beat cops.

In short, abolishing the service academies and picking up the slack via other commissioning sources would make the U.S. military less isolated, more well-grounded, more cohesive, and more meritocratic. These are vital features for a military—especially one representing a democracy. After all, these folks aren't fighting for imperial Prussia.

Service academy proponents in and out of uniform will howl at my suggestion. But none of their likely objections seems decisive.

The best argument for retaining the academies seems to be that compared to other commissioning programs they subject their participants to a more thorough and intense indoctrination in the military ethos. And this is no small matter. The military, especially a downsizing military, requires officers who are there not because they don't know what else to do or because the job market is lousy but because they are seriously committed to the profession of arms.

But just because the academies provide the best military orientation doesn't mean that despite all their inefficiencies and drawbacks we have to keep them in business. What we should do instead is incorporate much more of their indoctrination program into the other remaining commissioning sources. In other words, after the abolition of the academies, in addition to whatever technical and academic training is subsequently received by up-from-the-ranks officer candidates, ROTC graduates, and OCS students, officers should all have to start off in an uninterrupted hard-core three-month indoctrination program on the same level of intensity as Plebe Summer at Annapolis or Beast Barracks at West Point. We could even keep one of the academy campuses as the year-round site for this initial phase. (But let's be sure to put the other two to good *civilian* use; they'd be ideal for national community service training and/or for retraining those making the transition from welfare to work.)

Advocates of the academies defend them on the ground that they are part of our military tradition. Well, so were the cavalry and segregation. At the very least, this point can hardly be used to save the Air Force Academy, which was only founded in 1954.

It will also be claimed that the academies supply a core of leadership that the military needs to survive through all the build-ups and build-downs. This is the gist of Barney Greenwald's famous speech at the end of *The Caine Mutiny*, in which Greenwald reminded the mutineers he'd just succesfully defended that while he and they had been happy civilians in peacetime, men like Captain Queeg—who was an Annapolis graduate—had been thanklessly manning the guns. The problem here is that while a strong officer corps is indeed essential, there's just no detectable sense in which it is uniquely or even mainly provided by the service academies. Again, statistically, you can't tell the difference between academy grads and other officers. And I offer this anecdotal evidence: When I was in the Navy, working for and alongside dozens of officers, ranging from incompetent to excellent to even inspiring, I never saw any correlation between how they did and where they came from.

A fall-back position is that, well, at least the services depend on the academies for the bulk of their *senior* officers. But that's not true either. The current Chairman of the Joint Chiefs, General John Shalikashvili is not an academy graduate, nor was his predecessor, General Colin Powell. Two-thirds of all generals and admirals are *not* academy grads.

The most desperate defense of the academies I've ever heard was offered recently by Rear Admiral Thomas Lynch, current superintendent of the Naval Academy: "We've had a president. Ross Perot may make it yet. We may have another one. We've had a host of congressmen and senators, both current and past, Nobel prize winners. A year or so ago, I could say that half of all of our astronauts were Naval Academy graduates. . . ." If you think this is a sound argument for keeping the service academies, then I have another good idea for you. How about a billion federal dollars a year for the Boy Scouts? □

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Memo of the Month

COMMITTEE ON FOREIGN AFFAIRS

INFORMATIONAL MEMORANDUM

February 10, 1994

TO: HFAC majority staff
FROM: Mike Van Dusen
RE: Format for memos for the chairman

The purpose of this memo is to enhance the consistency and clarity of HFAC staff memos for the chairman. This memo's format and content are meant to be a model for staff memos, but memos do not need to be exact replicas of this one. Lee has asked that longer memos begin with an italicized "headline" like this one, indicating in as few words as possible the main point or issue raised by the memo.

Background

Since Lee receives notes and memos from several sources every day, HFAC memos should be clearly identified as committee products at the top.

Memos should also clearly indicate at the top whether they are an:

- "Informational Memorandum";
- "Action Memorandum";
- "Meeting Memorandum," or
- "Meeting Request".

Any memorandum that ends with a recommendation for action or questions should be designated an "Action Memorandum."

If a "Meeting Memorandum" includes talking points, let Lee know in the "Re:" entry. The "Re:" entry should also note the date, time, and location of the meeting.

The "From:" entry should include the names of all staff who contributed to the memo. If someone on the staff reviewed or approved the memo, please add his or her name in a "Through:" entry. If you are comfortable doing so, the chairman doesn't mind being called "Lee" in memos or in person.

If necessary, include a "Background" section like this one. This section should contain any information you think will be necessary to put an issue or problem in context. If this or any other section of your memo is long, use sub-headings to organize the material for easier reading. A "Background" section may be unnecessary in some cases, and you can start off with "Talking Points" or an "Action" section.

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The World's Most Dangerous Yard Sale

How the U.S. government sold hardware and blueprints for a nuclear bomb to an Idaho used-car salesman who wants to sell them overseas. Really

BY TIMOTHY NOAH

Most people's eyes glaze over when they see the term "public-private partnership." It denotes a boring-but-laudable solution to bureaucratic anomie: Give certain governmental tasks to private industry and they will be performed more efficiently. Who could object to that?

Increasing the number of public-private partnerships is a cornerstone of the Clinton administration's gospel of "reinventing government," which draws heavily on the 1992 book of the same name by David Osborne and Ted Gaebler. Government is urged to "steer," not "row," delegating the actual delivery of services to lower-rank public or private entities. Thus Al Gore's 1993 National Performance Review calls for, among other things, privatizing Defense Department data processing.

"Steer, don't row" can sometimes be good advice. As Thomas Peters and Robert Waterman demonstrated in their best-selling *In Search of Excellence*, overly centralized management in a large organization does tend to deaden creativity. In government, probably the most extreme example of the problem is the way modern presidents have taken to using sophisticated communications technology to usurp military commanders in the field.

Sometimes, though, the problem with government isn't that it rows too much, but that it rows too little. The case that will forever cause me to shiver when I hear the seemingly innocuous phrase "public-private partnership" is that of Tom Johansen, a used-car dealer in Pocatello, Idaho, who bought major components of a nuclear reprocessor from the Energy Department's contractor-run Idaho National Engineering Lab. If I had my wish, all Clinton administration officials who brainstorm about ways to "reinvent government" would be required to hear this cautionary tale about what happens when the government allows too much control over important public matters to slip from its grasp.

Tom Johansen, 41, is the proprietor of Frontier Car Corral, a battered beige corrugated-metal edifice in Pocatello, outside of which stood, when I visited in late July, a green 1973 Chevy pickup, a beige 1975 Sportscoach motor home, and a 1972

Timothy Noah is a former editor of The Washington Monthly. *This article is based on his reporting on the Tom Johansen story for* The Wall Street Journal.

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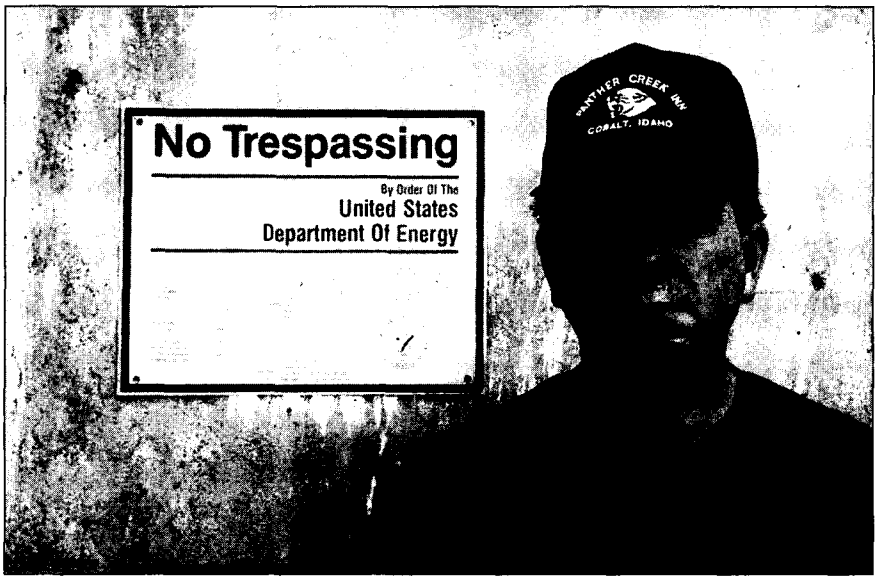
Flexible interurban bus that Johansen had bought from a local rock band. In addition to selling used vehicles, Johansen, backed by a Salt Lake City metals company, has a brisk scrap trade in items he purchases from the Energy Department's nearby Idaho National Engineering Lab.

In June 1993, Johansen received a bid solicitation from E G & G Idaho Inc., one of three contractors that run the Idaho lab. His curiosity was piqued by the fact that the items for sale were stored at the warehouse complex across the street from his used car lot. The inventory list didn't make clear exactly what the components were, but he noted that several were listed as "VES," which he knew from previous auctions meant vessels, probably stainless steel. These, Johansen reasoned, might have some resale value to a chemical company.

Potential bidders were invited to inspect the material, and at the appointed hour Johansen and a few other local businessmen were ushered into Building 16. Several aspects of the scene immediately attracted notice. Outside was a sign that read "No Trespassing . . . by authority of section 229 of the Atomic Energy Act of 1954." Just inside the door were two armed guards. And inside the warehouse itself stood what struck Johansen as a "massive" collection of steel slabs and cylinders.

The warehouse manager, Jim Roker, told the businessmen that they were looking at parts of a scrapped plant for reprocessing nuclear fuel. According to Johansen, Roker said, "I can't believe they're selling this stuff." (Roker denies making the latter comment, but says someone else might have.) But the plant, formally known as the Fuel Processing Restoration Project (FPR), was not going to be built—the Bush administration had canceled the project in 1992—and the Energy Department's Idaho branch had tired of paying rent on the hardware.

Designed in the early eighties during the sky's-the-limit period of defense spending, the FPR was intended to replace an older reprocessor at the Idaho lab that gobbled up spent fuel from the nuclear Navy and various government reactors and spat out uranium-235, a highly enriched fuel. The uranium was then shipped to the Energy Department's lab in Oak Ridge, Tennessee, where it was refabricated into fuel for a reactor that produced plutonium and tritium for nuclear warheads. But highly enriched uranium can itself be used to make a nuclear bomb. Uranium-235 is not as potent as plutonium. That stuff (justifiably) caused much international panic this past summer when German law enforcement officials arrested various individuals attempting to smuggle out samples widely suspected to have originated from Russia's lax nuclear research facilities. But some would argue that plutonium is actually *less* dangerous than uranium-235 because the uranium,



Tom Johansen of Pocatello, Idaho: used-car salesman and would-be nuclear entrepreneur

Sandy Johansen

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being less hazardous to handle and technologically easier to construct into a bomb, is *more* user-friendly to aspiring terrorists.

Nuclear reprocessing was once seen as a promising technology for civilian power plants, but after 1974, when India conducted a nuclear test with a bomb whose plutonium fuel was derived from a nuclear reprocessor, the U.S. government increasingly saw the spread of reprocessing as a threat to international security. Today, the U.S. is working hard to keep reprocessing technology out of the hands of North Korea and Iraq, among other countries, and the only nuclear reprocessing permitted within U.S. borders is in a tiny handful of government research facilities. The potentially dangerous glut of uranium-235 created by existing U.S. reprocessors was the Bush administration's main reason for abandoning plans to build Idaho's spanking-new FPR.

At the E G & G auction, Johansen submitted the winning bid of $153,999.99 to purchase FPR equipment that the federal government had once paid $10 million for. Johansen's acquisition constitutes roughly one-third—by all accounts, a highly significant third—of a nuclear reprocessor. Most of the other parts have either been shifted to other Energy Department facilities or remain at the Idaho lab. (A small, far less worrisome, assortment of electric motors and pumps was sold at the same auction to Don Thornton, the owner of Rocky Mountain Recycling, Inc. in Nampa, Idaho; Thornton paid about $1,700 for the stuff, much of which he's already sold off to farmers or melted down for scrap.) Possession of this equipment, then, puts Johansen (or anyone he might sell it to) well on his way to being able to build a nuclear warhead.

Nuke-it-yourself

How on earth could a private U.S. citizen purchase the guts of a nuclear bomb factory (at a price roughly comparable to what an ordinary, middle-class American might pay to buy a house)? Sad to say, this blunder comes as no surprise to anyone familiar with the chaotic management history of nuclear weapons facilities run by various private contractors for the Energy Department and its precursor agencies. The U.S. nuclear weapons program was begun in the rush to defeat Nazi Germany and Japan, and accelerated at the advent of the Cold War rivalry with the U.S.S.R. and China. There's no denying that it quickly mobilized some of the best minds in the nation to provide the U.S. with weapons of deterrence. But the federal government gave far too much latitude to the contractors who managed the weapons plants: Just build the weapons, it more or less said, and don't worry about anything else. Uncle Sam steered, but he didn't row.

The result was that the weapons plants, caught up in the urgency of their national defense mission, created an environmental catastrophe. According to a recent General Accounting Office report, the weapons plants disposed more than a billion cubic feet of hazardous and radioactive waste, much of it poured right into the ground or stored in containers that have long since deteriorated. Cleaning up the more than 5,700 contaminated areas that we know about will take decades, at an estimated cost of $300 billion.

Since the late eighties, when the contamination problem first attracted wide publicity, the Energy Department has worked valiantly to reform its contractor practices. But as the Johansen case shows, many of the old, lax practices endure. Amazingly, the Energy Department's Idaho office, in dispensing with the reprocessing equipment, did not require E G & G to take any special precautions. When the Pentagon—itself hardly a model for bureaucratic efficiency—sells military weapons as surplus, it punches holes or bends gun barrels to render the weapons inoperable. It would have been a simple matter for the Energy Department to require E G & G to take similar measures—say, to chop the FPR hardware up, or include a clause in its sales contract requiring the buyer to chop it up (the stuff, after all, was being sold as scrap). But no such requirement was laid down, and E G & G apparently didn't see fit to complicate the sale with any anti-proliferation measures of its own. "Our role at the site in this particular regard is to act as an agent for DOE," says Deborah Lorenz, E G & G's vice president of investor relations. "We take our directions from them." For its part, the Energy Department's Idaho office maintains to this day that the Johansen sale wasn't that big a deal. "If other countries wanted to get into the reprocessing business, they wouldn't have to come to Pocatello," says spokesman Brad Bugger.

A second question raised by the Johansen sale, of course, concerns Johansen himself. Why

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would a seemingly patriotic, law-abiding citizen purchase such sinister machinery? Johansen is an easy man to underestimate: His formal education ended in high school, he speaks in a slow drawl, and he shuffles around his used-car lot in self-effacing blue jeans and a baseball cap. (Memo to the Hollywood production company that called Johansen about filming his story: Think about casting Paul LeMat.) But like any good businessman, Johansen keeps an eye out for the big score, and it's clear that he had something more ambitious than a scrap sale in mind when he bought the reprocessing equipment. Today, Johansen says he knew when he bought the stuff that it was considered an international security problem, but resolved to market the equipment only to U.S. allies. He says he did not know until later that a nuclear reprocessor produces bomb-grade uranium.

In July 1993, Johansen took possession of the hardware, which remained in Building 16 but was now guarded by only a single lock on the door. By the curious logic of privatization, material that required round-the-clock guards when in government hands, presumably because it was a security risk, was apparently judged perfectly safe once it was Johansen's, and the government guards were removed; Johansen didn't bother to replace them. He then set about trying to find a buyer.

The first company Johansen tried selling the reprocessing equipment to was British Nuclear Fuels, Ltd., a firm whose name was passed along to Johansen by a helpful aide at the British embassy in Washington. Johansen faxed an inventory list to the company, which wasn't interested in buying the stuff, but expressed concern about it to the British Ministry of Defense, which in turn fired off a hand-written note to the U.S. State Department. "I don't know if you know but—FRONTIER SALVAGE of Idaho is trying to sell a Nuclear Fuel Reprocessing Plant!" wrote Ray Gatrell, a nuclear-safeguard official at Whitehall. "BNFL UK isn't interested. I wondered if Saddam Hussein et al might be. I thought you or your colleagues might wish to check it out."

The note had the desired effect. The State Department contacted the Nuclear Regulatory Commission, which hastily phoned Johansen to tell him that the reprocessing equipment was not exportable. NRC officials were worried that it might fall into the wrong hands, and that the no-strings sale of the hardware didn't appear to have been, in the words of NRC director of nonproliferation, Ronald Hauber, "properly careful." Meanwhile, the Energy Department's home office, upon learning of the sale, sent a memo from export control director John Rooney to 15 national lab field offices, including the Idaho lab, reminding them that they had "a responsibility to fulfillment of U.S. nuclear nonproliferation objectives," a statement roughly equivalent to reminding a policeman that he has a responsibility not to fire bullets randomly into a crowd.

While federal officials in Washington were fretting about how to resolve this colossal blunder before word leaked to Congress or the press, Johansen in turn was escalating the problem by ferreting out unclassified but sensitive documents that increased the value of his reprocessing components to potential foreign buyers. One interested party from Japan, who'd traveled to Pocatello to see the material, asked Johansen if he had any blueprints. In response, Johansen spent a couple of days phoning employees at the Idaho lab and asking how he could get them. Some told him they'd been destroyed. Others told him that such data would never be released to a private citizen. Figuring he had nothing to lose, Johansen faxed a request under the federal Freedom of Information Act (FOIA) to the Energy Department's Idaho field office. A few days later he received a letter from Carl R. Robertson, the office's FOIA officer, advising that the drawings were his for a mere $280 (to cover search and copying costs). FOIA, it turns out, creates a massive loophole in the government's efforts to keep sensitive-but-unclassified reprocessing data out of the wrong hands. As far back as 1987, the GAO was complaining that the Energy Department, unlike the Defense Department, did not have a FOIA exemption "for some of its comparably sensitive unclassified information," and didn't seem much interested in getting one.

When Johansen got word from the FOIA officer, his first thought was that if he didn't move quickly the Energy Department might change its mind. So he jumped into a rig and zoomed over to the Idaho lab, where an escort gave him not only the blueprints but also a crateful of x-rays of the components. After all, they were just taking up space at the lab.

Very nice, said the Japanese client when he had a look at some of the documents. But how

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did the pieces of the reprocessor fit together? Didn't Johansen have any flow sheets?

He hit the phones again, and this time Johansen stumbled across Lloyd McClure, manager of technology transfer for Westinghouse Idaho Nuclear Co., another contractor at the Idaho lab. McClure sent Johansen a manual with flow sheets and a government directory of nuclear facilities around the world, the better to hunt for potential customers.

To hunt for potential customers? That's right. While the Energy Department was steering, not rowing, an enterprising contractor employee was helping Johansen find overseas buyers for material that the U.S. did not want to leave the country. "I am glad the information on potential customers for the equipment that I supplied . . . has been helpful in identifying potential buyers who may have beneficial uses for the equipment," McClure wrote Johansen. "Sale for use should result in higher profits for you than just selling it as scrap."

When I phoned McClure to ask him about this piece of friendly advice, he pointed out that the documents he gave Johansen, like the documents Johansen got through his FOIA request, were unclassified. "We have a charter at the national labs to help local communities and local industry be more cost-efficient," he said. "I guess I never really thought at the time about the threat of it falling into some Third World country's hands or anything like that."

The NRC did. In February 1994, NRC chairman Ivan Selin wrote Energy Secretary Hazel O'Leary to express his concern that Johansen had not just the reprocessing equipment but now the blueprints and other technical documents as well. "We are concerned that someone may export sensitive items without authorization," he wrote. "We recommend, therefore, that the Department of Energy take prompt and direct steps to prevent any diversion to unauthorized use, including repurchasing the equipment from the salvage companies, if necessary."

That was February. O'Leary replied in July that her department had "acted to prevent harm being done in the Idaho case" by telling Johansen that he could sell his equipment and technical information within the U.S., but that selling it abroad was unlikely to be approved by the necessary federal agencies. (A bracingly candid Energy Department report on this mess recently termed the agency's response "somewhat sluggish" and said the agency "does not have a nonproliferation policy.")

For Johansen, though, the matter was far from settled. Frustrated in his repeated attempts to persuade the U.S. to let him export his reprocessing equipment, he'd embarked on negotiations with Energy Department officials to sell the material back to the government. Every time negotiations seemed to be getting somewhere, though, he'd get passed along to another official. Eventually he became so frustrated that he brought his story to the Snake River Alliance, a local anti-nuclear group, which in turn brought Johansen's story to me at *The Wall Street Journal.*

The *Journal* published my story on Johansen on August 3, the day O'Leary was set to give a press conference awarding a new consolidated-management contract for the Idaho lab. For reasons that O'Leary says had nothing to do with the Johansen affair, Westinghouse and E G & G lost the contract to a team led by an Idaho-lab newcomer, Lockheed (this, in spite of Lockheed's recent indictment alleging that the company bribed an Egyptian official to sell three C-130 Hercules aircraft; but that's another story). At the press conference, O'Leary said that Johansen "has done nothing wrong," but that she intended "unequivocally" to get the reprocessing materials back from Johansen. When I asked whether that meant buying them or seizing them, O'Leary said she didn't know. As I write this in early September, negotiations between Johansen and the Energy Department have reached an impasse over price. Johansen, who at one point entertained an $8.3 million offer from an Australian trading company (representing, Johansen says he's been informally told, the Indian government), is threatening to sell the stuff off by any legal means available.

On the day of the August press conference, O'Leary dispatched a government-funded security team to Building 16, where the reprocessing hardware had stood unguarded for more than a year. She also fired off an internal agency memo that said control over the admittedly unclassified reprocessing equipment and documentation was "inadequate." A new policy, she said, would be developed "within the next 90 days."

I don't know what that policy will be. But with any luck it will include not only a rudder, but also an oar. □

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Who's Calling The Shots At Fidelity?

What worries mutual fund managers should worry you. A look inside the high-pressure culture of Middle America's most popular investment

BY JOSEPH NOCERA

Once, not so very long ago, it was all so simple. Was it really only two decades ago that most Americans put their savings in the bank (where the interest was regulated by law), had checking accounts that offered no interest at all, took out a 30-year fixed mortgage when the time came to buy a house—*and then paid that mortgage off!*—and, if they were in the stock market at all (and most weren't), they owned a few, inherited shares of, say, General Motors? It seems more like two centuries ago, doesn't it?

American financial life is infinitely more complicated than it used to be—and riskier in every way. We now worry endlessly about an entire slice of life that we used to take for granted. Are interest rates poised to rise or drop? How's the Japanese market doing? How diversified should my portfolio be? How aggressive should I be with my retirement money? For better or worse, these are the sorts of questions that one hears all the time now.

One can trace this quantum change back to the days of roaring inflation in the late seventies—when interest rates were skyrocketing, 30-year fixed mortgages became relics of a bygone era, and people were desperate to find ways to keep pace with the cost of living. But even after inflation faded in the early 1980s, the new behaviors stayed; if anything, they became more pronounced, especially once the bull market began in August 1982. That was the moment when many people felt they had to become investors rather than simply savers.

And if there is any single financial product that exemplifies this shift, it is the mutual fund. Once an obscure investment instrument, mutual funds have become the financial vehicle of choice among middle-class Americans. Over 40 million people had put an astonishing $2.1 trillion in mutual funds by the end of 1993—a trillion dollars of that coming in just the previous three years—and fund assets now actually exceed life insurance assets.

It's not hard to understand the appeal of mutual funds. For most of us who lack the time or the inclination to study the stock market, there is something

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comforting about the notion that a professional fund manager is, in essence, making decisions on our behalf. The diversification of stocks in the funds would reduce risks (though of course the risks are scarcely eliminated), and the small army of stock researchers at the fund companies would help the fund managers make money with our assets. These were always the central ideas behind the funds—ultimately they were supposed to offer a *simpler* means of investing than scouting out stocks ourselves. And yet here we stand today, with more than 5,000 mutual funds being marketed as fund companies and magazines covering the funds clamor for our attention. Choosing a mutual fund has become incredibly complicated, and has directly tied the fortunes of the middle class to all the profits—and the perils—of a volatile market. What follows is the story behind part of that transformation.

Money matters

At the end of 1984, with the Dow Jones Average at 1211.57—and poised, after a lull, to make its next great surge—there were 1,246 mutual funds in America. Their number had tripled in a decade, and would nearly triple again before the 1980s were over, by which time there would be more mutual funds than there were stocks on the New York Stock Exchange. There were growth funds that specialized in large stocks, and growth funds that concentrated on small stocks. There were income funds that allowed junk bonds in the portfolio, and income funds that didn't. There were funds that only accepted IRA money. There were short-term bond funds and long-term bond funds, and funds that combined bonds and stocks. There were balanced funds and overseas funds, sector funds and convertible securities funds, aggressive funds and conservative funds, funds that stressed undervalued stocks and funds that stressed contrarian ideas. Twenty-eight million mutual fund accounts had been opened by 1984, and that number was rising every year.

But how could middle-class investors know which fund to choose? Which of those 1,246 mutual funds would speak to them directly, cutting through the growing cacophony of conflicting information and advice? For even as the funds themselves were proliferating, so was the information one could find about them. A dozen different magazines published ratings of mutual funds. Fund companies were doubling and tripling their advertising budgets. Article after article anointed this or that hot young fund manager as the new Peter Lynch, the legendary manager of Fidelity Magellan, the most successful mutual fund of the modern age. Halfway through the bull market, this was becoming the critical question for the nation's mutual fund companies. How could they ensure that their company's products would be the ones to rise above the growing din? How could they be *heard*? And as this need became more pronounced, it led to the next subtle evolution of the mutual fund industry. Within many fund companies, power began accruing to those who sold the funds—the marketers—at the expense of those who ran them—the portfolio managers. Not surprisingly, Fidelity Investments, which was in the process of becoming the nation's dominant mutual-fund company, was among the companies where this shift was the most apparent—to the delight of the marketers and the dismay of the fund managers.

It was, in fact, one of those hot young fund managers who would soon come to personify this shift—whose fate as a Fidelity fund manager would seem, afterward, to mark the moment when the marketers had triumphed. When he left Fidelity, after a short, bittersweet tenure, to strike out on his own, he became (somewhat against his will) Exhibit A for those who believed that the company's soul now lay in marketing. There was irony in this, to be sure, for his status as a hot young thing was in no small part the result of the efforts of Fidelity's marketing staff.

The young man's name was Paul Stuka, and he was among the seemingly endless supply of young fund managers who were spawned in the Fidelity hothouse of the mid-1980s. Stuka's fund was called Fidelity OTC Portfolio (OTC stands for Over the Counter, which encompasses the thousands of stocks not listed on either the New York or American stock exchanges), and he was 29 when he got his big chance, at the tail end of 1984. Half a year later, by which time he had turned 30, OTC Portfolio was up 51 percent, the second-best six-month return of any fund. Instantly, the press descended. *Business Week* photographed him leaning casually against a wall, eating a fruit cup. "The Rookie Running a Hot New Fund," read the headline. *Money* magazine described his "tousled hair and puckish grin." *USA*

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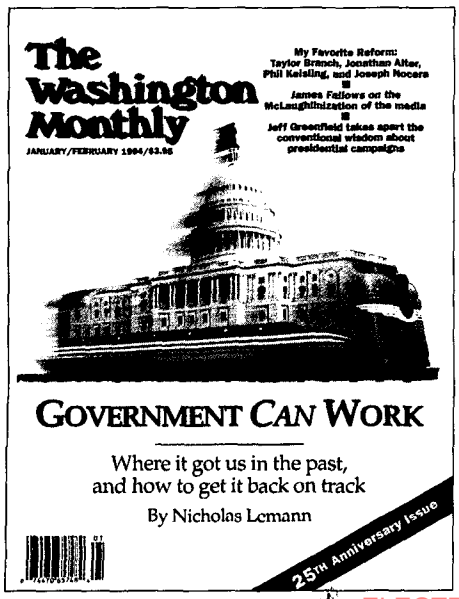

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Today and *The New York Times* probed his feelings about the market. And not long after that, he was gone.

For fund managers, there was now a great deal more pressure, and a great deal more scrutiny, than there had been in previous years. Gone were the days when a portfolio manager could toil in obscurity for a few years, gradually developing a suitable stock-picking style while laying a foundation that would lead to a decent performance record down the road. Now, the Fidelity marketing forces wanted a track record it could promote right away; it wasn't willing to wait years while a new fund manager worked out the kinks. Indeed, one key reason Fidelity created the OTC Portfolio was that the firm's executives believed (correctly) that over-the-counter stocks were nearing the bottom, and would soon start rising. They wanted a new fund that would be positioned to rise right along with the OTC market. Which they could then sell to the public as a top performing mutual fund.

They started Stuka off with $100,000. It was "house money"—seed capital supplied by Fidelity. OTC Portfolio was not open to the public, not right away; the Fidelity modus operandi during the 1980s was to keep a new fund under wraps for a short time, and observe how the fund manager did with the pocket change he had been handed without the whole world watching. Each trade the new fund manager made was closely tracked, and every move he made examined. There were formal meetings, during which the new fund manager was grilled by a handful of veterans: Why did you buy this stock? Why did you sell only a portion of that position? "The first meeting," recalls Stuka, "I got beat up pretty badly."

But when the OTC market began rising, Stuka's new fund began rising even faster, and the decision was made to open the fund to the public. Here, of course, was a second reason new funds were begun away from the glare of publicity; if things worked out the way they were supposed to, the fund manager would have an advertisable track record very soon after he began taking money from the public. To attract money into this unknown mutual fund, Fidelity could waive the load; such decisions were a key component of mutual fund marketing. Then, once the fund was hot, the firm could slap on a two or three percent load, since most people didn't mind paying a small price to get into a hot fund. In time, this became the classic Fidelity marketing strategy.

Did it work? Every time. It worked with George Noble's Overseas Fund, which had $2 billion in assets within two years, and with Tom Sweeney's Capital Appreciation Fund, which had $1.5 billion in its first two years. And it certainly worked with Stuka's OTC Portfolio. In the "old days," it took years for a new fund to gain substantial assets: Value Fund, started in 1980, didn't have $30 million until 1984. OTC Portfolio had that much money within four months. That was April 1985. By July it had $55 million; by October $81 million; by December $162 million. And then it really took off, quadrupling in size over the next six months, until it held close to $1 billion. "There was an appetite for products [like OTC Portfolio and Overseas]," says Fidelity's current head of marketing, Roger Servison. But that's a bit disingenuous. It was an appetite Fidelity did a great deal to whet.

"Gunning the fund," they called it. If you were a Fidelity portfolio manager who had had a hot quarter or six months, you could pretty well be assured that the marketers would gun your fund. Gunning the fund might include fiddling with the load, and it would always include increasing the fund's advertising budget, as ads touting the fund's wonderful recent performance would begin to appear regularly in *The New York Times*, *The Wall Street Journal*, and other newspapers and magazines. It meant sending out direct mail packages to current customers and prospective ones, while prodding the nation's financial press to write stories about the latest hot fund manager to come out of Fidelity (invariably described by the public relations department as appealing and down-to-earth and brimming over with common sense, especially for someone so young). And the fund manager himself would be paraded before the press, whether he liked it or not, the better to acquaint the public with his luminous talent. Fidelity spent around $100 million in advertising in 1986, and when a top Fidelity executive asked its top marketer at the time why the company had to have seven different ads every Sunday in *The New York Times* business section, the man replied simply, "Because they all work." Indeed they did. Between 1984 and 1986 Fidelity's customer base rose from 400,000 households to over one million,

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while the assets it managed grew from around $30 billion to close to $70 billion.

And what if a fund manager became uncomfortable with the way his fund was being promoted? What if he thought his fund was attracting more assets than he could profitably invest? What if he wanted the marketers to turn down the throttle, or shut the fund to new investors? In general, if a Fidelity fund manager had such complaints, he was out of luck. Other fund companies might close a fund to the public if it got too big; Vanguard, Fidelity's fiercest mutual fund competitor, did so with its most popular fund, Windsor, when it hit the $9 billion mark. But this was unthinkable at Fidelity during the bull market.

Stuka was among the portfolio managers who complained. He had been able to handle the inflow of money during 1985, but he became less and less comfortable as 1986 unfolded, and the fund began adding more assets in a month than it had gained its entire first year. He'd come into the office on a Monday morning and discover that the fund had gained another $10 million over the weekend—money he was supposed to put to work immediately. He couldn't do it. He couldn't find enough of his favorite small stocks to invest the assets that were pouring in. He began letting assets sit in money market funds; at one point 16 percent of the fund was in cash, which was practically a punishable offense at Fidelity. After all, cash holdings dragged down yield and hurt the marketing department's chance of peddling the fund. "They used to come down hard on fund managers who held too much of the fund's assets in cash," recalls a former Fidelity hand.

Finally, Stuka asked Fidelity to stop advertising his fund. He knew what he was asking: "There's no overt statement at Fidelity that the funds have to keep growing and the ads have to keep running," he says. "You just pick it up from the feel of the place."

Later, Rodger Lawson, who headed Fidelity's marketing efforts at the time, would claim that there were times when Fidelity did stop advertising a fund, at least temporarily, at the request of a fund manager. But this was not one of those times. It was Lawson's apparent opinion that the over-the-counter market was more than big enough to absorb $1 billion, and that the problem lay, essentially, with Stuka's fund managing style. Stuka needed to adapt. He needed to find bigger OTC stocks, like Microsoft and Apple Computer, and end his fixation on those unknown little gems he preferred. Request denied.

Later, too, *The Wall Street Journal* would recount how Stuka had felt pushed into some bad choices, particularly in high-technology stocks. Stuka didn't name names, but he didn't have to; it was obvious who he felt had pushed him. It was an open secret in the equity department at Fidelity that the marketers occasionally did more than push; they sometimes *demanded* that portfolio managers invest in a particular category of bond or security, even against the fund manager's better judgment—the better to pump up the fund's return. At the same time, Stuka's performance dropped substantially, which Stuka later attributed to his large cash position. "Looking back," he said, "you'd have been better off just throwing money at the market—and I wasn't willing to do that." So instead he left.

Heady Days

It's 1987 now. More precisely, it's eight days into 1987, and the Dow Jones average, which has already risen almost 100 points since the year began, closes for the first time ever over the 2,000 point mark. If we lived in a world where momentous events were still signaled by the ringing of bells in the town square, that's what we would have heard that January day; we would have heard bells tolling joyously. Instead, we live in a world where such events are signaled by the emphasis they are given on the network news shows and the nation's newspapers. It is there that this milestone is celebrated, as reporters and news commentators all agree that we have just witnessed a signature moment in a bull market that shows no signs of slowing down.

It was a riveting thing to watch. There were days when people would walk into a Fidelity branch office, watch the stock tape for a while, and walk out knowing they had seen the Dow Jones average rise 20 points during their lunch hour. Middle-class Americans did that in the middle of 1987; they walked to a brokerage office on their lunch hour to watch the market go up. There were also days when the market went down, of course, sometimes by as much as 40 or 50 points, but those days were the equivalent of hitting an air-pocket—momentarily scary and instantly reversed.

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Yet watching the market rocket upward, mesmerizing though it was, was perhaps the least illuminating way to understand the effect it was having on America. For that, one had to look toward Main Street as well as Wall Street. By 1987, the bull market had spread well beyond the pages of *Barron's* and *The Wall Street Journal* and had leeched into the larger culture. Each evening, network anchormen announced the latest rise in the Dow Jones average—a piece of news they'd reported sporadically before, if at all. *USA Today,* a newspaper with a shrewd sense of middle-class concerns, heralded the bull market at every opportunity. Rupert Murdoch, the publisher of downscale tabloid newspapers, began running contests revolving around the stock market. Other cultural artifacts emerged; bull market T-shirts, bull market games, bull market songs. Plainly, this was not the cognoscenti's bull market, the way it had been in the 1950s. By 1987, 55 million mutual fund accounts had been opened, holding more than $750 billion, while the number of people owning individual stocks was closing in on 40 million. The middle class was not only aware of this bull market, it was part of it.

Peter Lynch likes to recall that by the early part of 1987, whenever he went to a cocktail party, he would be surrounded by people wanting to talk about the market. But instead of asking his advice on stocks, they would offer theirs. That, says Lynch, is when he began to realize that things were veering a bit out of control. One could get the same feeling by looking at *Money* magazine, circa 1987. The covers of nine of the first 11 issues in 1987 promised sure-fire strategies for making money in the market. But the bull market had also found its way into other, less likely Time, Inc., publications, such as *People* magazine, which ran one article on a formerly obscure money manager named Martin Zweig, and another, a few months later, about a summer camp devoted to teaching preteens about the stock market. In Rhode Island, a psychologist began advertising himself as the country's first "investor psychologist." The "Stock Doc," he called himself.

During the same period, a handful of new investment gurus emerged. Their new prominence also seemed to suggest that things were getting out of hand. Probably the best-known of the new gurus was Robert Prechter, a 37-year-old market technician who lived in Gainesville, Georgia, and was proclaiming loudly that the Dow would top 3,600 before the bull market ended. This was an extremely appealing message to a great many people, to say the least, and it reaped him an enormous amount of publicity. It also helped get him some 20,000 subscribers to his own highly priced newsletter. What was strange about Prechter's appeal was not so much his message, but what it was based on. Prechter believed in something called the Elliot Wave Theory, which, to put it bluntly, was virtually incomprehensible to anyone but him. It didn't seem to matter. Prechter was saying what people wanted to hear, at a time when they wanted to hear it. So he gained followers.

Just as middle-class Americans had once talked about real estate at dinner parties, now they talked about the stock market. The smell of money was in the air. This, after all, was the era that glorified the conspicuously wealthy and made heroes out of corporate-takeover artists. Some of the more adventurous of the new breed of middle class investors began speculating in rumored takeover stocks, though they played this game at a distinct disadvantage, since they usually got these rumors from *The Wall Street Journal*—which meant, essentially, that they were the last to know. Still, the rumors were often right; many of these Main Street speculators made money.

Does it need to be pointed out that Wall Street was every bit as euphoric as Main Street? Perhaps not. With trading volume on the New York Stock Exchange closing in on 180 million shares a day—nearly double what it had been at the beginning of the bull market—commission income stood at record levels. Money was pouring in. Employment in the securities industry went from 1.7 million to 2.3 million in four years. Fidelity quadrupled in size during the bull market; it had some 8,000 people on the payroll by August 1987. Merrill Lynch moved into another new headquarters building, this one in the World Financial Center, with plans eventually to take over a second World Financial Center skyscraper. There were no brakes on this expansion, no words of caution from company elders. It was as if Wall Street believed, right along with its customers, that the bull market would never end, that they'd all get rich and that everyone would live happily ever after.

When, late in the summer of 1987, a veteran Merrill Lynch broker went to his supervisor to suggest that the firm begin holding seminars on how to protect clients in the bear market that was

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sure to come, he got nowhere. It would be too damaging to the morale of all the new brokers, the supervisor replied, who were working the bull market for all it was worth. Besides, the manager added happily, "We're not going to have a bear market. The market is going to 3,600!"

Bear Necessity

But it wasn't going to 3,600, at least not then. It's obvious now—and it should have been obvious at the time—that the first eight months of 1987 marked the final, frenzied run-up that always comes before the awful fall. There had been just such a run-up before the crash of 1929, too, and it had been marked by the same kind of euphoria, the same forgetfulness that bull markets always end and bear markets always follow, the same complacency, the same willful suspension of disbelief.

"When it will end is anybody's guess," a *New York Times* reporter could actually write in an August story about the bull market—a story published barely three weeks before the bull market reached its peak. "Experts say the traditional signs of a dying bull market have not yet appeared: excessive optimism, heavy issuance of new stock, and sudden participation by small investors who normally do not buy stocks." But that's *exactly* what had happened. Excessive optimism was everywhere. Issuance of new stock was rampant. And as for the "sudden participation by small investors," all one had to do to see that was spend a little time listening to the phone calls pouring into places like Fidelity, as people who barely knew the difference between a stock and a bond began throwing their savings into the market. In that same article, the *Times* reported that stock and bond funds—"the primary investment vehicle of small investors," the paper called them—had seen their combined assets grow from $53.7 billion to $430 billion since 1982. Where in the world did the *Times* think this money came from? It came from the "sudden participation" of the middle class. There was no other place it *could* have come from.

"The market climbs a wall of worry." So goes one of the great truisms of the stock market. What happened in the summer of 1987 was that everybody stopped worrying—sophisticated investors as well as rank novices, Wall Street as well as Main Street. If the history of the markets tells us anything at all, it tells us that there is no surer sign that the end is near. □

The Washington Monthly

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Ruben Castaneda

The Washington Post

There can be no greater obstruction to justice than the intimidation of criminal witnesses. The mob has been doing it for years, but in Washington, D.C., Castaneda writes, there has been an explosion in the instances of witness intimidation, even murder, prompting recent Congressional hearings on the matter. In one 1993 narcotics and murder case alone, 9 potential witnesses were murdered, while another 40 were forced into the federal witness protection program. If defendants think they can beat a rap by eliminating potential witnesses, the entire criminal justice system is in danger. Needless to say, it is becoming more difficult for police and prosecutors to find witnesses willing to appear in court. In fact, approximately 30 to 35 percent of murder cases in Washington cannot be prosecuted because witnesses are afraid to cooperate. "We know exactly who's doing the shooting," one D.C. police captain said. "The problem is getting witnesses to testify. That's the crux of it."

The Monthly Journalism Award is presented each month to the best newspaper, magazine, television, or radio story (or series of stories) on our political system. Nominations for any newspaper, magazine, or radio or television station in the country are welcome. The subject can be government in its federal, state, or municipal manifestation. Please send nominations to Monthly Journalism Award, 1611 Connecticut Ave. NW, Washington, D.C. 20009. Two copies of the article or broadcast text should accompany the nomination.

Nominations for stories published or aired in August will close October 15. The winner will be announced in the November issue.

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Very Risky Business

If we don't watch out, a new kind of Wall Street gambling—exotic derivatives trading—could shake the market and put the taxpayers on the line for another bailout

BY SENATOR BYRON DORGAN

Last spring, when the stock market took its hair-raising ride, in one corner of Wall Street there was more than the usual anxiety. In fact, there was stockbrokers-looking-for-upper-floor-windows kind of fright. In April, clients of the giant Bankers Trust New York Inc.—including Procter & Gamble—took multimillion dollar losses on a kind of trading most Americans had never even heard of, called "derivatives." A rumor went around the Street: Maybe something truly sinister was brewing. Maybe this was a . . . derivatives collapse.

The spring market panic hit just as the March issue of *Fortune*—hardly a carping business critic—cast a dark pall over derivatives, which are complicated futures contracts based on mathematical formulas. *Fortune* called them an "enormous, pervasive, and controversial financial force." The magazine added: "Most chillingly, derivatives hold the possibility of systemic risk—the danger that these contracts might directly or indirectly cause some localized or particularized trouble in the financial markets to spread uncontrollably."

The headline on the *Fortune* cover was "The Risk That Just Won't Go Away," shown over a pool of alligators. With that staring back at brokers and investors from their coffee tables, the sudden dip in the Dow and the story of Bankers Trust made people think, *Hey, we really need to get a grip on this.* But the dip turned out to be a blip, and the crisis passed out of the news. In typical fashion, the media moved on to other matters, content that where there's no immediate crisis, there can be no fire.

Yet, this "false alarm" could turn out to be a harbinger of a real financial conflagration—one that would make us nostalgic for the days of the $500 billion savings-and-loan collapse. In August, *The Wall Street Journal* declared that derivatives were now a $35 trillion—that's right, *trillion*—worldwide market. The U.S. share is estimated at $16 trillion, which is four times the nation's economic output. And the *Journal* estimates that since 1993 there have been $6.4 billion lost in

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the derivatives game—$6.4 billion that could have opened businesses and created jobs. Derivatives are no doubt widespread: An Investment Company Institute survey found that 475 mutual funds with net assets of $350 billion recently held derivatives; about two-thirds of those assets were in short-term bond funds sold to average investors. And here's the real kicker: Because the key players are federally insured banks, every taxpayer in the country is on the line.

So what is this thing called a derivative? Bankers and speculators maintain it's just hedging, a perfectly normal practice to manage risk. Farmers hedge, so do banks and businesses. So what's the big deal? Derivatives have become much more than managing risk. They have begun, in some cases, to look like a financial casino where the decisions are wagering decisions, not business ones. Derivatives may well be the most complicated financial device ever—contracts based on mathematical formulas, involving multiple and interwoven bets on currency and interest rates in an ever-expanding galaxy of permutation. Of course, what individual investors knowingly do with their own money is their own business. But when financial institutions are setting up what amount to keno pits in their lobbies, it's something that should concern all of us.

Let me explain by example. One form of derivative—the most simple—is a futures contract, which is the traditional device for a company to lock in a price for materials at a future time. Say a company that manufactures film—Company X—needs to buy silver every year and wants to guard against rising silver prices. So in 1994 it enters into a contract with a mining company to pay the going 1994 rate in 1995. This is a risk for X if silver prices tumble, because they will be required to pay the higher price. But if prices rise, X wins because it will be able to buy the silver for less than the 1995 market price. Of course, speculators can buy and sell such commodities contracts with no intention of actually obtaining the commodity, hence gambling on the fluctuation of prices. But this kind of traditional futures trading takes place on organized exchanges that are well-regulated and well-understood.

The troubling derivative deals are much different. They take the basic futures idea a quantum leap further into a netherworld of high finance. Let's take a simple example. Say Company X is under an obligation to sell film in Japan next year. Assume further that the company's analysts believe the value of the yen will fall against the dollar. The analysts would like to protect against the risk that silver and yen prices may fluctuate over the course of the year, thus hedging their original hedge. The company can't go to an exchange in Chicago and get that precise deal, so it gets on the telephone to its bankers and suggests that the bank write a customized contract that is based on the delivery price of silver in yen, not in dollars. This is called an "over-the-counter," or OTC, transaction, since it does not take place on an organized exchange.

The new speculative twist is much, much riskier for both Company X and the bank. It doubles the stakes: now, instead of betting just on the price of silver, it is also wagering on the value of the yen. Why would X do this? Because doubling the bet may hedge their risk in both the silver and yen markets. Why the yen? Because its analysts, in consultation with the bankers, used complex mathematical models and probability charts to decide the yen bet was a good gamble.

If the analysts were right about the yen, of course, it all works out. But if they were wrong about the yen, and wrong about the silver, too, the result would be like having two lead weights slide to one end of a see-saw.

Unlike a traditional future, moreover, these exotic derivatives are almost impossible to sell if one of the two bets goes south. They are especially tailored to X's needs, and are therefore unattractive to other buyers.

And that's a *simple* example. Currency fluctuations are just the beginning. Interest rate gambles are common, too, and in this volatile year have led to many of the big losses, including the $700 million that Piper Jaffray, the respected Minneapolis firm, lost on behalf of clients that included small city governments and the local symphony association. Piper Jaffray had decided on the basis of obscure mathematical formulas that interest rates would not rise.

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Unfortunately, the formula didn't anticipate the Federal Reserve Board's rate hikes this year.

More trouble comes from exotic new derivatives called "swaps." Say Company A has borrowed money at a floating interest rate but is worried that rates might rise. It wants to lock in the rates at the lower level. So it calls a derivatives dealer—often a major bank—to find another company, call it B, which is willing to bet that the floating rates will be more favorable than the set rate. A swap results: Company A will pay a fixed rate of interest to Company B, which will pay a floating market rate to Company A. The risk to Company A is that rates will fall but A will be obligated to pay the higher, fixed rate. The risk to Company B is that B will end up paying higher rates than the fixed rate it receives from A. If you had trouble following that, then you are starting to get the idea. And all of this can be done without anyone even knowing, since such transactions can be done "off book"—effectively concealing them from stockholders and employees. Procter & Gamble bought a floating rate deal like this from Bankers Trust, losing a reported $157 million in the process.

There has been a steady flow of such losses in past months. The reports of recent derivatives disasters could be the first trickles of water through a rickety dam: Askin Capital Management, in New York, lost $600 million; Kidder Peabody, $350 million; CS First Boston Inc., $40 million. Such debacles have led some leading Wall Street sages—Gerald Corrigan, the former president of the New York Federal Reserve; Felix Rohatyn, the investment banker; and Henry Kaufman, the bond guru, among others—to warn that derivatives are out of control. These men are not given to impetuous overstatement where finance is concerned. Nobody would care if these were just a few Donald Trumps taking a hit at a respectable financial casino.

But the truly scary thing is how losses like these could spread through the entire banking system. Suppose X, our film company, had entered into a swap with a New York bank. That bank in turn might then enter an offsetting contract with another bank which in turn might continue to pass along that risk on and on and on, perhaps using exchange-traded futures. So now a default by X could create a domino effect: X could not pay its bank, and its bank therefore couldn't make the payments on its offsetting contract, and so on until the chain of losses enters the exchange, where the originally esoteric bet can hurt real businesses. This is not mere fantasy. According to the Brady Report on the causes of 1987's Black Monday 508-point fall, the problem was worsened by automatic computer programs that kept ordering traders to sell stock index futures—which are, in essence, derivatives.

Making matters still worse is the concentration of big derivatives dealers. The General Accounting Office found this year that much of the big OTC derivatives dealing is concentrated among 15 major U.S. dealers—including federally insured banks—that are extensively linked to one another and to exchange-traded markets. The top seven domestic bank OTC dealers accounted for more than 90 percent of total bank derivatives action, and the top five U.S. securities firms accounted for 87 percent of all such activity in securities in the country. Add in the always-more-volatile foreign markets (tied to about $4 trillion of the U.S.'s $16 trillion) and we're talking real money.

"This combination of global involvement, concentration, and linkages," warns Charles Bowsher, the head of the GAO, "means that the sudden failure or abrupt withdrawal from trading of any of these large U.S. dealers could cause liquidity problems in the markets and could also pose risks to the others, including federally insured banks and the financial system as a whole."

If this seems a remote possibility, don't forget that financial implosions nearly always seem that way—before they happen. This kind has has happened before, albeit on a smaller scale. The S&Ls are the most notorious example, of course, but there are others. The failure of the Bank of New England, in 1991, cost taxpayers $1.2 billion, and the bank had a $30 billion portfolio of derivatives that had to be painstakingly unwound to avoid, in the words of the GAO, "market disruptions." And the feds have had to clean up non-banking financial messes as well. In 1990, when Drexel Burnham Lambert failed, the government had to insure payments that flowed between Drexel's sundry creditors and debtors to avoid a chain reaction. With a $35

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trillion derivatives market, a crash would make these precursors look Lilliputian.

All that stands between the public and a financial disaster of this sort is the guardians of the banking system in Washington. Regrettably, they are outgunned by the derivatives dealers in several ways. For one, there are fewer examiners than dealers, and many examiners are young and inexperienced. Worse, exotic derivatives—the stuff the big boys are doing—just don't fit within the existing scheme of federal finance regulation. It's a little like asking traffic cops to stop the nation's computer crime.

Perhaps it seems that none of this concerns you directly, but in this spooky new financial world, there are basically three ways you could lose.

Think a federal bailout can't happen again? They happen all the time. There are the S&Ls; the failure of the Bank of New England cost taxpayers $1.2 billion; and when Drexel Burnham Lambert went under, the government had to underwrite the firm's payments to creditors.

- *You have money in a money market fund or a mutual fund.* This is the scariest and most immediate prospect for most Americans. It's entirely possible—in fact, it's all too likely—that you wouldn't know whether your fund had money at risk. Two-thirds of the assets held by tax-exempt U.S. money market funds, which were created to give the small investor access to high rates of return, are now covered by derivatives. BankAmerica recently had to pump $67.9 million into its Pacific Horizon money market funds to make up for derivatives losses. As for mutual fund losses, ask Mound, Minnesota. When the public officials of the Minneapolis suburb wanted to tuck $2.5 million away to pay for new water meters and sewers, it chose an eminently respectable, reputedly conservative Piper Jaffray mutual fund that invests in U.S. government securities. But as *The Wall Street Journal* reported this summer, Mound lost $500,000 because Piper Jaffray was playing a derivatives game with the town's money, betting that interest rates would fall. Leaders of Moorhead, Minnesota, can tell you a similar story.
- *A private investment goes bad.* If you are a stockholder in a company that's trading in derivatives, and the bets turn out badly, the stock is going to take a hit. In one of the biggest cases so far, the German firm Metallgesellschaft, a mining, metals, and industrial company, took what may be a $2 billion loss on derivatives. One of the company's U.S. subsidiaries, MG Corp., which owns an oil refinery, bet on oil prices and lost badly. Several divisions of the company have had to be sold, and 7,500 out of 46,000 employees were laid off.
- *Government takes a hit—either directly or indirectly—through bank losses in derivatives.* Mound's local taxpayers lost money; in Orange County, California, taxpayers had to meet a $140 million collateral call when some derivatives speculations started going bad. This is not the best use of the taxpayers' money. The federal government, too, is quietly but rapidly getting into the game. The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation use exotic derivatives, as does Sallie Mae. And because these are federally chartered corporations, the possibility of the federal government getting stuck with clean-up costs is great.

Bank shots

In the peculiar market of recent years, successful exotic derivatives have been a miracle drug for bank balance sheets, not to mention the dealers who are shovelling in millions. It's not surprising, then, that these banks and dealers are resisting reform. What *is* surprising is that the

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Office of the Comptroller of the Currency (OCC) and the Federal Reserve agree, too, that legislative reform is unnecessary. "As far as the Federal Reserve Board is concerned," Chairman Alan Greenspan testified in May, "we believe that we are ahead of the curve on this issue as best one can get." Why would Greenspan, in light of the mounting evidence, soft-peddle the problem? Partly, it's the old story. Because the Federal Reserve, like other banking regulators, tends to think more like the people it is supposed to be watchdogging—in this case, the banks and the larger financial community—than they think like the rest of us. And in fact, in the case of the Federal Reserve, it *is* the industry it is supposed to oversee: The members of the Federal Reserve *are* bankers.

This does not augur well. Just a few years ago, the S&L crisis began with a trickle of bad news, a few seemingly unrelated belly-flops. A chorus of operators, experts, and federal regulators assured the public and Congress that nothing was substantially amiss.

Certainly the industry understands the parallel—enough, at least, to try to convince Congress that the parallel doesn't exist. The International Swaps and Derivatives Association, a trade group of the most exotic operators, recently hired one of the top Washington lobbying firms to make their case. And although some members of Congress are awake to the derivatives problem, it takes more than that to reach a critical mass.

That's where the press comes in—or should. But except for a few pieces, the national press has been cowed by the complexity of the subject. Instead of inquisitive reporting, we get reports of assurances from Greenspan and others. Part of the reason is that, as with the S&Ls, the disasters so far seem local: Piper Jaffray is a Minnesota story, etc. Back in the mid-eighties, when thrifts were beginning to collapse, it seemed as if it were a Texas story one day, a California story the next—never a national story. With the huge exception of *The Wall Street Journal* (and even it is more specialized a publication than, say, *The New York Times* or *The Washington Post*), a story like the S&Ls or derivatives only makes it off the business pages after disaster strikes and it's too late to rally public attention to reform.

Another reason is that much of this story lies in the pedestrian precincts of the regulatory culture. "It's a case where the government is outgunned and outmanned," says a senior GAO official. "One or two people at the top of the agencies are really knowledgeable, but I don't know how deep the talent goes. And at the big banks, you're going to have talent all the way down." At the Fed and the OCC, there are about 3,000 examiners but hardly any of them monitor derivatives. That task falls to small teams of about 10 to 15 examiners who go into major banks like Citicorp and are expected to track deals that the banks need up to 100 different analysts and traders to put together.

Dollars and sense

House Banking Chairman Henry Gonzalez wants to strengthen reporting requirements for derivatives trading—a sound step, but alone this keeps federal taxpayers in the line of fire. I think I have a better, cleaner idea. I have introduced S. 2123 in the U.S. Senate, which would prohibit banks and other federally insured institutions from playing roulette in the derivatives market. If an institution has deposits insured by the federal government, it should not be involved in trading risky derivatives. Of course, what investors do with their own money is their own business. (And of course, dealers must be required to tell their customers when derivatives are involved; in the Piper Jaffray debacle, customers did *not* understand what was happening.) But what banks do with money insured by the taxpayers is another matter entirely.

The classic purpose of deposit insurance, one of the enduring legacies of the New Deal, is to encourage saving and create a pool of capital to build homes and businesses and jobs. Deposit insurance is *not* supposed to underwrite airy speculation on Wall Street, and my bill will stop that.

Banks will argue that derivatives are good since they hedge risks they take by loaning money to real people. But my proposal would not affect traditional, conservative forms of hedging. And banks, so long as they created pools of betting money outside their federally insured deposits, could gamble to their hearts' content. But not with *our* money. □

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Gossip, Politics, and Power

From Walter Winchell and FDR to Liz Smith and Hillary Clinton, a cultural primer on how celebrity has come to dominate American life

BY JON MEACHAM

Winchell: Gossip, Power, and the Culture of Celebrity
Neal Gabler, *Alfred A. Knopf, $30*

Early last spring, the sharks were closing in on Hillary Rodham Clinton. Damaged first by allegations about her husband's near-compulsive infidelity and then by accusations about her own financial past, Mrs. Clinton had to fight back. But how? Although she would later call a much-praised formal press conference, the First Lady's public relations offensive in those bleak days amounted to hosting exclusive teas not with Johnny Apple of the *Times* or with David Broder of the *Post* but with four "celebrity columnists" (their term): Jeannie Williams of *USA Today*, Liz Smith of *Newsday*, Cindy Adams of the *New York Post*, and Linda Stasi of the New York *Daily News*. In a bid to reach their vast audiences—*USA Today* has up to six million readers and Smith is syndicated in 70 papers across the country—Mrs. Clinton twice kibbitzed with these women at New York hotels, winning flattering columns from each.

"She's very impressive and very, very smart," Jeannie Williams recently told me. "I think she really truly does like to chat about fun stuff—about what the celebs are doing. We talked about the kinds of things that David Broder wouldn't care about." Adds Smith: "She appears to be candid and down-to-earth, which is a terrific trick for a public person. . . . She has given us access that I don't think too many journalists have had." Smith, one of whose columns was headlined "Hillary Hits Back at Critics," is right. Asked why Mrs. Clinton has granted such generous audiences to this journalistic circle but to no other, her press secretary, Lisa Caputo, says, "I don't discuss why we do the things we do, but suffice it to say that Mrs. Clinton likes all of those women very much and enjoys spending time with them."

Of course, it was time well spent in making her case to millions of ordinary Americans. Mrs. Clinton undoubtedly knew this, and may have congratulated herself on her strategic wisdom. But whether they knew it or not, Mrs. Clinton and the columnists were playing out long-standing roles in a social drama established by a man an entire generation of Americans may have never heard of: Walter Winchell.

Look back for a moment: On May 10, 1938, Winchell, the syndicated gossip columnist of New York's *Daily Mirror* and NBC radio broadcaster, left his informal headquarters at Manhattan's Stork Club to spend the day in Washington. This was no ordinary visit, and Winchell was no ordinary visitor: The Washington *Times-Herald* assigned eight reporters to cover the occasion for its front page; J. Edgar Hoover attended a luncheon in his honor. And, at four o'clock that afternoon, Winchell was shown in to see President Roosevelt. The session was scheduled to last five minutes; it ran nearly an hour. FDR's secretary "bounced in three times," reported *Newsweek*, "only to find Roosevelt, not Winchell, was prolonging the conversation."

Always shrewd, FDR entertained Winchell with very good reason. In the late thirties and early forties, 50 million Americans, out of an

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adult population of about 75 million, either listened to Winchell's weekly radio broadcast or read his six-day-a-week column, which was syndicated in more than 1,000 newspapers. (This eclipsed even Will Rogers, who had a radio and newspaper audience of 40 million before his death in 1935.) And during the Depression and World War II, there was no voice more favorable to Roosevelt than Winchell's. After the president's first inauguration, in 1933, Winchell hailed FDR as "the Nation's new hero" and asserted, "Better times are almost here again—because of President Roosevelt!" For the next 12 years, virtually every Winchell column and broadcast would include a bouquet for FDR.

Without much exaggeration, it could be said that Washington's reverential reception of Winchell on that spring day in 1938 signalled the irrevocable intersection of politics and celebrity—the moment at which public relations emerged as the organizing principle of American culture. Though it has been more than 30 years since he was a household name (he died, after years of increasing obscurity, in 1972), without Winchell, Mrs. Clinton would not have thought to summon her gossip columnist pals to her side in a time of trouble. There would be no *People* magazine; no David Letterman; no "Larry King Live"—in short, there would be no mainstream culture of celebrity. "This culture," writes Neal Gabler in *Winchell*, "would bind an increasingly diverse, mobile, and atomized nation until *it* became, in many respects, America's dominant ethos, celebrity consciousness our new common denominator." For anyone who wants to understand the way we live now, this brilliant new book is essential.

Celebrity Quest

Born in 1897 and enduring a melodramatically deprived childhood in the Jewish section of Harlem, Winchell was a sixth-grade dropout who started out in vaudeville before finding his calling in writing spunky gossip items for newspapers. Beginning in the twenties, he was on the scene, pen in hand, at a time of major social change, and through his column and his broadcasts he would help give American culture its distinctive shape by being a forum for the making and tracking of celebrities in an age of mass entertainment and democracy.

Consider: For there to be such a thing as a "celebrity culture," certain elements must be in place. As Nicholas Lemann has observed, there must first be a group of people deemed interesting enough to be celebrated by a large audience with the means to do the celebrating. In other words, you need a celebrity class that a broad section of the public wants to know about through newspapers, radio, magazines, and (later) television. In modern America, the outlines of this culture—the one Winchell would catapult to enduring national significance—can be found about 1919, when Cholly Knickerbocker, a columnist for the Hearst papers, coined the term "cafe society" to characterize the shift of old-line socialites (the Astors, for example) from entertaining only in their mansions to dining out in public places. "Society is going out to dinner," Knickerbocker noted, "out to night life, and letting down the barriers." Hence "society" became "cafe society." As the Jazz Age took hold and speakeasies came into vogue, debutantes from old families began mixing with the newly rich and the Broadway theatrical crowd. The Stork and El Morocco became the places to be seen in. The old rule that status in society depended on birth fell away, for cafe society prized one value above all, and it wasn't blood—it was fame. As Winchell put it, "Social position is now more a matter of press than prestige."

And who, exactly, controlled access to the press? Columnists such as Ed Sullivan, Leonard Lyons, Earl Wilson—and, most important of all, Winchell, who was, incredibly, the first newspaperman to write about Broadway, romance, divorce, and social jockeying in mainstream publications. Gabler writes: "A mention in his column or on his broadcast meant one was among the exalted. It meant that one's name was part of the general fund of knowledge. It meant that one's exploits, even if they were only the exploits of dining, rated acknowledgement. It meant that one's life was validated. . . ." The good about this is that it opened the way for people of accomplishment but not of high birth to become leading members of society (Damon Runyon, Joe DiMaggio, Tennessee Williams). The bad is that celebrity became an end in itself,

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with everybody beginning to think of himself as a potential market commodity. In fact, Winchell spawned an entire industry of publicity men, people hired by the rich and the ambitious to get their names in the papers and thus become members of the new elite.

Winchell's ethos was glamorously seductive: DiMaggio and Marilyn Monroe chatting with Ernest Hemingway while the suave mobster Frank Costello, debutantes, and Broadway stars swirled about, smoking cigarettes and drinking champagne cocktails. Reflecting on the New York of this period, John Cheever once wrote that it was a time when "the city of New York was still filled with a river light, when you heard Benny Goodman from a radio in the corner stationery store, and when almost everybody wore a hat. Here is the last of that generation of chain smokers who woke the world in the morning with their coughing, who used to get stoned at cocktail parties and perform obsolete dance steps like the 'Cleveland Chicken,' [and] sail for Europe on ships."

Walter Winchell: "Good evening Mr. and Mrs. America, and all the ships at sea."

At the same time Winchell was chronicling this New York social milieu from the mid-twenties to the mid-fifties, there would also be no major event in American political life which he would not touch. He was, for example, a primary author of the Hoover G-man myth in the thirties, firmly establishing the Director as an American hero to the broad public; in the days leading up to World War II, Winchell cabled advice to Ambassador Joseph Kennedy and British Prime Minister Neville Chamberlain (they both responded gratefully); he mentioned Alger Hiss' possible treachery to FDR long before it riveted the nation; he defended MacArthur against Truman; and he claimed to have introduced Joe McCarthy to Roy Cohn. This last marks the point at which Winchell went terribly wrong and veered off into Red-baiting, which in combination with the eclipse of radio by television, a medium he never mastered, led to Winchell's fall from fame.

Still, it is striking to think now of having a powerful voice like Winchell's on the side of the angels in public life. Winchell's devotion to Roosevelt, for instance, was genuine and rather touching. In one column, titled "If I Had an Aladdin's Lamp," Winchell wrote: "I'd fix matters so that FDR never even caught a cold." On economics, Winchell praised the president for wanting to "bring about a more equal distribution of income." And as the thirties grew darker in Europe, Winchell did all he could to prepare his millions of followers for the coming struggle: "Men cannot be free when their country is in chains. Those who try to keep their security by avoiding risk thereby invite attack."

Winchell's political pronouncements came in a blizzard of ephemeral gossip—who was getting "Reno-vated" (Winchellese for a Nevada divorce) and who was "Adam-and-Eveing-It" (romancing). The net effect was to blend three worlds together—politics, sports, and entertainment—to the point where they were virtually indistinguishable from one another. Politicians would play by the same rules of public relations (in the form of mentions in papers and on the radio) as movie stars and other aspiring cafe socialites. Two illustrations make the point. When Winchell wrote that Lucille Ball was pregnant (or, as he put it, was expecting "a blessed event"), Lucy said, "If Winchell says so, it's got-

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ta be true." In 1953, after Winchell had become a conservative Eisenhower booster, Ike told mutual friends he and Mamie often listened to Winchell's show and "WW is [the president's] best voice and contact with the people." Eisenhower even invited Winchell to the White House for a two-hour visit, where he toured the family quarters and putted on the carpet in the president's bedroom.

To a country first consumed by the Depression, then with fighting Hitler, then with the beginnings of the Cold War, celebrities were a welcome distraction. Beginning in the twenties, of course, the majority of the country was moving from rural to urban settings, and people who left small towns and farms left behind, too, the networks of kith and kin that had long formed the basis of daily life. What Winchell was giving this new, more democratic, and uprooted America was a national culture. If you didn't know your neighbors anymore, that didn't matter; you could talk about what Clark Gable or Hedy Lamarr was up to. Winchell's trademark opening line ("Good evening Mr. and Mrs. America, and all the ships at sea") was followed by a blend of gossip and patriotic bromides manufactured for them at his famous Table 50 at the Stork Club. It was a mix of items that prefigured how Larry King, sitting at his table at CNN, would have Melanie Griffith on one night and the president of the United States on the next. Winchell was marketing such "info-tainment" in the thirties. On his Sunday night radio broadcast, announcer Ben Grauer would introduce him as "the most versatile reporter in America . . . Walter Winchell covers Broadway and Hollywood, politics and society . . . and his news of today makes the headlines of tomorrow." Of his style, Gabler writes: "The deaths of ten thousand people in Ethiopia was followed immediately by a Hollywood divorce or romance. . . . Dozens of these items raced past listeners each program, not only abutting one another but given the same urgency and drama. Nothing was differentiated."

"A mention in Winchell's column meant that one was among the exalted. It meant that one's name was part of the general fund of knowledge. . . . It meant that one's life was validated." It meant, above all, that you *mattered* in the new celebrity order.

This outraged the intellectual elites of the day, especially men like Walter Lippmann and Harold Ross, who published the longest profile in the history of *The New Yorker* savaging Winchell. But nothing could stymie Winchell's popular appeal: One listener recalled "strolling one Sabbath evening for six blocks through a residential section of Birmingham [Alabama] and never losing a word of WW's broadcast as his voice came through a succession of open windows." Alexander Woollcott wrote that "I have never been able to get far enough into the North woods not to find some trapper there who would quote Winchell's latest observation," and he recalled a "painful" scene in London's Hatchard's bookshop where a lord's order for Winchell's Monday column had not been filled.

More broadly, the values Winchell created—the thirst of the ambitious for press and the validation that comes from being famous—not only endure; they predominate.

There is, of course, the Kennedy example. Joseph Kennedy, Sr., began the century hustling for social respectability. He had been celebrated, at the age of 28, as America's "youngest bank president" in the Hearst papers, and suddenly Kennedy was known not just in Boston but all over the country. This lesson in celebrity was not lost on him; he saw the opportunities cafe society offered to a man with money and contacts. For the next four decades, Kennedy would market his family in newspaper and magazine pieces, "loan" money to influential editors, and seek advice on public relations from Arthur Krock of

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The New York Times. For his part, John Kennedy visited the Stork Club as a young man and loved running with socialites like the reporter Ben Bradlee and stars like Frank Sinatra. He even married into cafe society. Kennedy's friend Lem Billings noted: "I knew right away that Jackie was different from all the other girls Jack had been dating. She was more intelligent, more literary, more substantial. And her mother's second marriage to Hugh Auchincloss carried the family into the social register, which gave Jackie a certain classiness that's hard to describe." Even in the White House, JFK was so obsessed with his image that he spent hours choosing which photographs of himself and his young family would be released to the public. There is no mistaking the enduring nature of this family legacy when, after her mother's death this spring, Caroline Kennedy landed on the cover of *Ladies' Home Journal* discussing how to cope with grief.

Star Dust

For those aspiring to membership in today's Washington elite, Winchell's legacy is the desire for fame, no matter how it is attained. And what is the best way to win fame in Washington, if you're not born a Kennedy or caught up in a scandal? Get yourself on television, whether it's "Crossfire" or "Charlie Rose" or "The McLaughlin Group." And how do you appeal to the hosts and producers of these shows? Not with passionate belief; that's boring, *earnest*.

Once, men like FDR and Will Rogers (and, in his better moments, Winchell) genuinely cared about the country and used their celebrity to pull the nation together. Now, while the outward forms of Winchell's world exist—the columns, the shows, the lust for celebrity conferred in the media of the day—the progressive passion Rogers and Winchell ("Better times are almost here—because of President Roosevelt!") represented in the thirties is utterly passe. Consider the enormous popularity of Rush Limbaugh, one purveyor of the prevailing ironic view *and* of right-wing politics. David Letterman is an even better example of how Winchell's celebrity culture operates now, because his schtick is complete sarcasm. Watching Letterman, with his sardonic Top 10 lists and practiced uninterest in his guests, you get the feeling that he would rather be back playing second fiddle to Jay Leno than be caught *believing* in anything. Belief entails risk, and Letterman is not about risk.

When it comes to politics, these shows—whether a late-night show on the networks or a chat show on cable—want someone playing a liberal or (preferably) a conservative role in an entertaining way. Most of all, they want wit, and the easiest way to seem witty and smart is to be ironic, skeptical, and play to the zeitgeist—to knock down, not build up. The ability to put things down in a glib way means you'll always make an interesting guest, and being an interesting guest is what's vital, because only by being invited back does fame come.

Michael Kinsley, the co-host of "Crossfire," acknowledges that much of what happens on his show is make-believe for people who simply want to be on the air: "There are some people, like Senator Al D'Amato, and he rants and yells and screams and calls you every name in the book. And then during the break he leans over and sort of goes like this and says, 'How am I doing? Is this what you want?'" So public life has become a scripted drama, with men playing parts designed to win attention rather than do substantive good. "They all come on with their soundbites; that's the worst problem," says Kinsley. "They will spit them out no matter what you ask them. There are even people who give courses on how to appear on these shows."

A celebrity culture isn't intrinsically bad; it's what celebrities do with fame that matters. Gabler has brought Winchell and his times to vivid life—you can, at times, smell the cigarette smoke and hear the clatter of telegraph keys that tapped in the background of Winchell's broadcasts. What we should take away from Winchell's story, however, is not just nostalgia but the lesson of what became of the Stork Club, which Winchell famously promoted as "the New Yorkiest spot in New York." Today, on the same spot on East 53rd Street, stands a tiny park, a pocket of quiet in the middle of Manhattan. The center of Winchell's world is gone, demolished. Our culture, for better or for worse, was born there, and the fate of that once-swish spot should remind all who aspire to fame that winning celebrity may be damned hard, but leaving something behind is the hardest part of all. □

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Sex, Please, I'm British

From Margaret Thatcher's shapely ankles to Princess Diana's father's tacky furniture, an English politician's gossipy diary dishes about life inside 10 Downing Street and the country house set

BY DIANA MCLELLAN

Mrs. Thatcher's Minister: The Private Diaries of Alan Clark
Alan Clark, *Farrar, Straus, and Giroux, $30*

If a man lies to his diary, as Lyn Nofziger remarked during Josh Steiner's Whitewater testimony, it's not a diary, it's a liary.

If he is as truthful as both nature and nurture allow, like H.R. Haldeman, it is a revelation.

And if, standing equally close to the throne, he writes with total candor, indiscretion, and relish—not only about the mighty who surround him, but of his own ambition, posturing, malice, irrationality, lust, snobbery, power struggles, and pleasure in the discomfiture of rivals; and if he is a gentleman and a scholar to boot, an engaging and rounded man devoid of hypocrisy, one who rejoices in his possessions and sexuality, yet is keenly attuned to the brevity of life, the joy of family, the beauty of nature, and the fun of politics—well, to start with, you can bet that he's not in Washington.

Mrs. Thatcher's Minister: The Private Diaries of Alan Clark is, of course, British. Part Pepys, part Trollope, part *Yes, Minister*, part *Tom Jones*, it is the juiciest socio-political read of the nineties.

Alan Clark, son of the late Sir Kenneth Clark of *Civilisation* fame, kept these vivid diaries during his eight years in three successive Tory administrations in Britain.

The very first entry braces you for the ride ahead. Here's a walk around the lush grounds of Saltwood, Clark's castle in Kent; a confrontation with a trespasser ("I cursed him, and he crumpled disarmingly"); Clark's firm conviction that his stepmother, Nolwyn, Comtesse de Janze, had poisoned his dying father; his poignant regret that he had failed to enter fully into his father's aesthetic world; his expectations of an upcoming political campaign ("Wotya going to do for me then, guv?"); a speech he made in the House; a fellow M.P.'s wager that he'll get a government appointment from Mrs. Thatcher; and his lust for a busty new *au pair* in one of the cottages on his estate.

This last is to be a recurring note. Despite what is evidently a happy marriage to a woman who delights him, women of all conditions occupy Clark's reveries and his diaries.

"I'm madly in love with Francis Holland [his 22-year-old Labour Party opponent]," he writes. "I suspect she's not as thin and gawky as she seems, her hair is always lovely and shiny. Perhaps I can distract her at the count on Thursday and kiss her in one of those big janitor's cupboards off the Lower Guildhall. . ."

"I can only properly enjoy a carol service," he observes one Christmas, "if I am having an illicit affair with someone in the congregation. Why is this? Perhaps because they are essentially pagan, not Christian, celebrations."

Other objects of his desire range from a plump young shopgirl on a train "whose delightful globes bounced prominently, but happily, under a

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rope-knitted jersey," to Prime Minister Margaret Thatcher.

"She sat next to me (first time ever) and . . . I radiated a protective feeling—and, indeed, feelings of another kind. She has very small feet and attractive—not bony—ankles in the 1940 style. The Prime Minister's foot twisted and turned the entire time although her eyes were closed, and her head nodded at intervals. The back of her hair is perfect, almost identical to previous days. It can't be a full wig, the front is clearly her own. I suspect it is a 'chignon.'"

He worries constantly about falling out of favor with "the Lady." He languishes when she is distant. He jumps for joy when she doesn't sack him for one notable failure to defend her government—"Dear, good, kind, sweet Lady."

Not all members of the tender gender rate either his lust or his loyalty, by the way. He condemns a certain type of overdressed and self-regarding female as "oopsie-la," and finds our own Jeane Kirkpatrick "odious . . . Stalinist . . . humorless . . . loathsome"—an "Anglophobe harridan, and a mixture between Irene Worth and Eleanor Roosevelt" who reminds him of a hated governess of his youth.

The British press, during Clark's years as Minister of Trade, Minister of State, and Minister of Defense, 1983 to 1991, described him as "laid-back but cerebral" and "one of the most attractive as well as one of the cleverest of Mrs. Thatcher's ministers." He agrees: "My paper, it is clear, is the lead document," he gloats over one success. "How shrewd and good I was to get it in first!" Or, "By sheer energy and clarity of thought, I put together the deal. . ." He cannot wait to take his new haircut to the Party Conference in Blackpool, "to swagger and ponce." He understands why he is forbidden to go on TV to discuss the deadline for Saddam Hussein's withdrawal from Kuwait—because "they recognize that I am more glamorous and have a quicker mind than the other ministers, who mustn't be 'outshone.'"

Martha Gradisher

And yet, despite his overweening vanity and an occasional case of testosterone poisoning, you really can't help liking the man. Clark lays out his political disasters as lip-smackingly as his triumphs: The time he got completely blotto at a wine-tasting just before reading his first ministerial speech on equal pay to the House of Commons is a superb example—an agonizing, maundering, gabbling humiliation. Afterward, he writes, "that little garden gnome Peter Rost sidled up and said, 'After a performance like that, I almost considered voting against.' Poxy little runt, what's he ever done?"

He announces to a sour and distant Prince Charles at a dinner with businessmen that in 30 years' time, Japan will dominate the world and English will merely be the tongue of the global peasantry. He tells Margaret Thatcher, on Ger-

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man reunification, "You're wrong, you're just wrong." (John Major, then just a young-man-on-the-make, was moved to slink up and remark, "You're a military strategist. Oughtn't you to be sending your tanks around the flank, rather than attacking head-on?")

Besides slipperiness, there's much among the political machinations he outlines here that will seem eerily familiar to denizens of Washington: the budgetary trickery used to repeatedly over-finance government departments; the sad spectacles presented by men robbed of their power in cabinet re-shuffles; meetings that must be held closed "so no press, no posturing"; the perils of juggling bills and proposals to please too many, with the resulting hodge-podge earning nothing but disdain from those it hoped to placate.

"[Prime Minister Thatcher] sat next to me (first time ever) and . . . I radiated a protective feeling—and, indeed, feelings of another kind. She has very small feet and attractive—not bony—ankles in the 1940 style."

Most politicians regard the drudgery, compromise, and mediocrity that make up their days as necessary sacrifices at the altar of ambition. For Clark, who has everything a man could possibly want waiting for him at home, they are hell.

His insider's view of the coup that brought down Margaret Thatcher—"changing the Prime Minister without any electoral authority to do so"—is riveting. He tries to console her as the dark clouds menace in early November of 1990, presaging "the urgent and unanimous abandonment of the Lady."

"I don't think she realizes what a jam she's in. It's the Bunker syndrome. Everyone around you is clicking their heels. The saluting sentries have highly polished boots and beautifully creased uniforms. But out there at the Front it's all disintegrating. The soldiers are starving in tatters and makeshift bandages. Whole units are mutinous and in flight. . . ."

As it looked as though the despised Michael Heseltine could take over, he notes, people began to "come out—'Oh, I don't think he's so bad, really,' 'He's got such wide appeal!' 'My people love him, I must say. . .'"—all phrases that have been uttered tens of thousands of times in Washington, D.C. In fact, the biggest gulf between Capitol Hill and Westminster today seems to be one of booze: Here, a Perrier or prayer breakfast followed by a game of racquetball or a roll around the House or Senate gym keep pols in touch; there, gallons of wine, whiskey, brandy, port, champagne, and Black Velvets lubricate the daily and nightly give-and-take.

Clark, though plainly a fit man, frets because he can no longer perform a single pull-up on the bar at the top of the castle tower at around sixty; his own mortality haunts him constantly. What is his life expectancy? "Fifteen years? . . . At what stage does one's reserve of years change from being inexhaustible—of no concern or consequence—into a rapidly diminishing triangle of sand at the neck of the glass, which is scrutinized obsessively?"

Much of his bracing sense of self rests on the *noblesse oblige* that comes with being, well, Alan Clark. As his wife Jane told him when he complained about Nicholas Soames going into politics, "Don't be beastly, so few of the upper classes go into politics today, you've all got to stick together." He plays his preordained role to the hilt. He writes of going into his "Emergency-Unctuous Mode" when constituents come in to grumble. (The Clarks, a footnote tells us, believe that constantly and inaudibly repeating the word "brush" composes one's features into an expression of benign concern for such occasions.) He shamelessly hams up a wreath-laying.

Clark is, of course, a snob, unavoidable perhaps in a man whose life unfolded surrounded by his family's exquisite possessions in Saltwood Castle, at Briboll, his Scottish Estate, and in

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Chalet Caroline, his Swiss retreat. He is in love with his houses, his cars, his treasures. He twice quotes a colleague's remark about Heseltine—"the trouble with Michael is that he had to buy all his furniture"—and he occasionally whines about the Servant Problem. It's because of death duties, he writes, and the "levelling up" of standards of the lower classes. Why, poor Jane had to drain and clean the swimming pool herself. They are always too exhausted to entertain—and besides, it's so expensive, with good claret at a hundred pounds minimum per bottle.

While he is tolerant and kind to his own plainly incompetent chauffeur and past-it butler, he hates the "slobs, yobs, junkies, freeloaders, claimants and criminals on day-leave who make their living by exploitation of the benefits system."

His heart really belongs to the animal kingdom. He's always ready, he writes, to while away half an hour or so reading Beatrix Potter's tales of Squirrel Nutkin or Johnny Townmouse, "and feel calmer as a result." Here he is tenderly rescuing a wounded baby jackdaw, or taking the castle's tortoises out of hibernation, or watching Jane "hood" the peafowl needed to replenish the stock at a friend's castle, or missing a meeting to tend a wounded badger caught in a snare. ("Good! What are *they* beside the saving of a beautiful and independent creature of the wild?") Here he is sobbing inconsolably after shooting a heron that was eating all the fish in the castle moat—"I cursed and blubbed up in my bedroom . . . I was near a nervous breakdown."

The barbarities of fur-trapping upset him terribly. As Minister of Trade, he managed to integrate heart and mind, introducing legislation called the Fur Labeling Order. It dictated the labeling of all furs taken from animals caught in traps.

After months of passionate work, victory was in sight. Only the Canadians objected. He was summoned to Mrs. Thatcher's office.

> 'Alan, how are you?'
> I ignored this: 'I'm so sorry that you should be getting all this trouble from the Canadians.'
> 'Oh, it's not trouble, I think there's more to it . . .'
> She asks him, 'Why not labeling of battery hens, of veal who never see daylight, of fish which had a hook in their mouth? What about foxes? Do you hunt?'
> 'Certainly not. Nor do I allow it on my land. And as for veal, I'm a vegetarian.'
> 'What about your shoes? . . .'
> 'I don't think you would want your ministers to wear plastic shoes.'
> 'It's not you, Alan. It's just so unlike you to respond to pressure.'
> 'I'm not 'responding to pressure.' I'm generating it. I believe in it.'

It was, he writes, "a prototypical example of an argument with a woman—no rational sequence, associative, lateral thinking, jumping rails the whole time," and it lasted for 55 minutes. Miserably, inevitably, and with grace, he surrendered.

The grace, perhaps, is something he inherited from Papa—along with his gimlet eye. For despite his plaint that he had neglected to evolve artistically, Kenneth Clark's sensibilities are his, too. He notes a colleague reading over his text, "lips moving occasionally—like my father's description of Picasso when first confronted with a portfolio of [Henry] Moore's drawings." He rejoices in arranging flowers from Saltwood in his office. Visiting the extravagant marble palace of the Emir in Abu Dhabi, he finds the staircase is out of scale. At Althorpe for Earl Spencer's birthday party, he notes the poorly restored paintings, vulgar reupholstery, and tacky new veneers and inlays on the fine old furniture of Princess Di's dad. He deplores the lack of objets d'art scattered around Highgrove, Prince Charles' house.

His ambition throughout the diaries is to be named a Privy Councilor. When he finally achieves it, he arrives at the Cabinet office late with a full bladder and shoe-polish on his hands, and goes to Buckingham Palace. He is greeted by Palace staffers with "that shallow courtesy, smooth complexion, and careful coiffure of the Establishment homosexual." When they take him in to meet the Queen, he cannot help noticing the "indifferent pictures" on her wall.

"Is she really rather dull and stupid?" he wonders. "Or is she thinking 'How do people as dull and stupid as this ever get to be ministers?'"

Rash, maybe. Politically incorrect, definitely. Egotistical and wildly tactless, yes. But never stupid. And never, ever dull. □

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Tidbits & Outrages

OF COURSE WE'LL HAVE TO FRISK THEM FOR CLEARASIL

The New York Times reports that the Florida Department of Law Enforcement is considering trying to keep teenagers from repeatedly cruising main streets in cars by using low-pressure sodium street lighting because, in the words of a department researcher, "It makes their acne stand out."

IN A RELATED DEVELOPMENT, THE BASEBALL PLAYERS UNION ANNOUNCED THAT FROM NOW ON, ITS AVERAGE SALARY FIGURES WILL INCLUDE LITTLE LEAGUERS

So that "the physician looks less like he's gouging America," the American Medical Association has announced that its future calculations of doctors' median income will no longer just cover physicians in private practice but will also include the incomes of doctors in training and those employed by the government.

"HELLO FOLKS, I'M RUBE GOLDBERG AND I'LL BE YOUR CAPTAIN ON TODAY'S FLIGHT"

According to the National Transportation Safety Board and American Airlines, an incident in which an American flight accidentally went into a steep dive, injuring 17 passengers, was caused this way: To make room for a box of soft drinks, coffee, and water brought into the cockpit by a flight attendant, a reserve crew member at the time flying in the captain's seat moved the first officer's seat forward. This startled the first officer, who then pushed into the control column. The movement of the control column turned off the plane's autopilot, which sent the plane into a nosedive.

THANK GOD NOBODY TRIED TO BRING THEM A BOX OF SOFT DRINKS, COFFEE, AND WATER

Two Delta ground employees were dismissed and arrested after taking an empty Boeing 737 on a mile-long run around a Tucson airport taxiway at 3 a.m.

—Scott Shuger

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To Have and To Spin

How Mary Matalin and James Carville are campaigning to be Washington's hottest celebrity couple

BY MATTHEW COOPER

All's Fair: Love, War, and Running for President
Mary Matalin and James Carville, with Peter Knobler
Simon & Schuster and Random House, $24

If you're like me, you find it almost irresistible to be suspicious of a book like this. After all, most memoirs that are so heavily trumpeted don't live up to the fanfare, and *All's Fair* is, well, being trumpeted blaringly. James Carville and Mary Matalin received almost a million dollar advance to tell the story of their oddball romance and to wax about their roles in opposing camps in the 1992 presidential election. Capitalizing on the Hatfield-and-McCoy quality of their marriage, rivals Simon & Schuster and Random House are making a big deal about their co-publishing the book. And in keeping with the circus atmosphere surrounding their book's release, Carville and Matalin have even posed for publicity photos with a live donkey and elephant.

I think my suspicions were merited. First off, *All's Fair* tends to be disappointingly short on the kind of insider gossip that makes politico memoirs so much fun. Sure, Carville takes a few shots at longtime Clinton campaign aide Betsey Wright for screwing up the Clinton response to George Bush's charge that he raised taxes 128 times. And Matalin piles on John Sununu, bashing the already-pummeled former chief of staff for being dictatorial. But there's nothing here so interesting as, for example, the nugget in Donald Regan's memoirs that Ronald Reagan took political counsel from Nancy's astrologer.

More important, the book does only a modest job of explaining the Carville-Matalin relationship and why it works despite their political differences. As you read the book—which is divided into chunks marked "Mary" and "James" and (ghost)written in their respective voices—some things about their relationship do make sense. Their politics aren't all that far apart. She is pro-choice, for instance. He despairs about liberal elitism in the Democratic Party on issues such as arts and abortion funding. Both are basically moderates. Beyond politics, other things bind them. They share a blue-collar, hard-knocks kind of background. He grew up in tiny Carville, Louisiana, the son of a postal worker dad and a mom who sold encyclopedias. Carville reminds us constantly that it was only after a series of botched careers—Marine, science teacher, small-time lawyer—that his life hit an upward trajectory. In one hard luck scene set in 1984, he is crying on the platform of Washington's Union Station, 38, completely broke, with nowhere to go after Gary Hart's presidential campaign, itself broke, said it couldn't pay him for the office work he was doing at its headquarters. Matalin's rise was not much different. The granddaughter of Croatian immigrants, she grew up in ethnic Chicago and went through several career miscues—including a stint as a beautician—before rising in politics.

Their marriage is bound, too, by a sassy lightheartedness. There's James in the now-infamous Clinton campaign War Room, offering volunteers $100 if he can crack eggs over their

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heads; there's Mary leading a conga line down the aisle of Air Force One. When the two describe their terse 3 a.m. phone calls during the campaign or their pre-celebrity days when they first started dating, it's easy to see that they're much alike. The problem, though, is that Carville and Matalin don't offer much of a guide for the rest of us about how to relate to people with whom we have political differences. Such unions face real and complex hurdles, but Carville and Matalin are too frenetic to explain how they work it out.

Perhaps one reason their marriage works is that their first love isn't the governing part of politics but the campaigning. That would make sense because they're at their best explaining the zaniness of daily life during a campaign. Zillions of gallons of ink are spilled analyzing American political races, but Carville and Matalin's book does the rare thing of explaining the addictive quality that draws so many people into a life of campaigns. There are thousands of people who go from campaign to campaign with little interest in sticking around for the governing part. For Carville, it's the same need to be needed that draws people into volunteer work. "Folks wonder why it's always the same people volunteering," says Carville. "The person who does the church fairs is the one who does the United Way drive is the one who does the Heart Association picnic. It's because people come down from being a part of something, from being needed, and have to move on to something else to get that feeling." Both of them love the rush of working 18-hour-days amid the whirl of fax machines and cellular phones.

Their enthusiasm for their job, even when it's hard, is pretty infectious. In one of the funnier scenes in *All's Fair*, Carville describes the fights over Clinton's crowded campaign schedule. Everyone is angry at him. Hillary and her pal, the notoriously tough New York lawyer Susan Thomases, are bellowing to Carville over how Clinton is overbooked, tired. Clinton is calling from the campaign plane to Carville in Little Rock to complain about exhaustion. Meanwhile, Louisiana Senator John Breaux is on line two, livid that the campaign has cancelled a Louisiana event that he had labored to assemble. Other political types are yelling at Carville to get Clinton out around the country to visit more states that look shaky. "The phone slips," says Carville, "are stacked up like unpaid bills and you were always calculating which to get to first." For her part, Matalin offers a funny account of trying to set up an "impromptu" visit of Bush to a bingo hall that ends up with the presidential motorcade getting lost.

Still, there is a phoniness to much of the book and, in some ways, to Matalin and Carville. First, there are some misstatements of fact. I didn't cover George Bush's campaign, but I did cover Clinton's, and I know that Carville is dissembling when he says, for instance, that Clinton's Sistah Souljah speech was not intended to be a big deal. (Even Matalin herself accuses Carville of being disingenuous on this point. The authors obviously felt no compelling need to sort out all the facts before going to press.) In the hours leading up to the speech, Clinton aides made it quite clear in asides to the press that it was going to be a very big deal and, of course, by challenging Jesse Jackson so directly it proved to be a huge event. Likewise, Matalin understates the involvement of British conservatives in spreading rumors about Clinton's Oxford days. And in other ways small and large facts are fudged. Carville uses quotation marks promiscuously when it's clear that he's not quoting people exactly. That's a forgivable transgression, but it has no place in a book that lambastes the press for its ethical flaws. More important, you walk away from the book not knowing how much of Carville and Matalin's life is pure schtick. Carville admits that a lot of his kinetic Cajun routine is, simply, hype.

Running mates

Most irksome is their attitude toward celebrity. At one point Matalin complains about a dinner she and Carville have with reporters at a fashionable Washington restaurant named I Ricchi, "this loud, to-be-seen kind of Washington restaurant. I hated this scene." But it happens that Carville and Matalin eat almost nightly at The Palm, a loud, to-be-seen kind of restaurant across the street from I Ricchi. The couple's dining habits are, of course, their own business. But her posturing that she hates the Washington glamour scene is grating and unnecessary. Why not just admit that they like it?

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When it comes to dealing with the press, Carville and Matalin are particularly squirrely. They rip into the press as an institution—but pull their punches by refusing to lash out at any individual reporters. In a reverse spin on the press tendency to cultivate sources, Carville and Matalin throw bouquets to individual members of the Fourth Estate, even as they skewer them as a whole. Mary on *Newsweek*'s Joe Klein: "He's very hip, a lot of fun to banter with." Carville dispatches valentines to institutions: "The *L.A. Times* distinguished itself in this campaign and clearly belongs in the pantheon with the leading East Coast newspapers." And he tosses them to individuals: "David Von Drehle and David Maraniss [of *The Washington Post*] and Maureen Dowd [of *The New York Times*] were probably the best writers on the campaign and did the funniest, most interesting pieces."

A Marriage of Consultants: Mary Matalin and James Carville

© Kelly Campbell

When it comes to critiquing the press in general, however, Carville and Matalin can barely contain their rage. "We didn't get into a lot of intellectual discussions about the future of America," Carville says of his chats with reporters. "They'd never ask you about what Bill Clinton was trying to do for the country, they'd want to know how he was going to get there." The press, in the Carville-Matalin view, is The Beast. Always foraging, it must be fed a daily dose of pictures and soundbites and anecdotes, otherwise it will write nasty stories about the candidate.

To some degree, this rap on political reporters is right. Matalin is particularly on target when she talks about the pack mentality of the press and its tendency to get a line on something and not to let go. And it's no doubt true that personality, conflict, and campaigns tend to soak up more of the press' collective energies than issues stories. But it's unfair to say that issues tend to get ignored during a campaign. Political scientists such as Samuel Popkin, a Clinton consultant, have shown that most voters, by Election Day, do have a pretty good sense of where the candidates stand on the basic issues. Besides, the campaign strategists themselves are obsessed with photo ops and strategy, as this book makes clear.

Carville is at his weakest when he declares that the press are scandalmongers, willing to pick up any rumor and run with it. This is the lowest common denominator theory of journalism, the idea that the tabloid papers publish sleazy stories which in turn force the mainstream media to latch on. Naturally, he cites the Gennifer Flowers and draft stories as examples of the press running amok. There's no question that the press gave Gennifer Flowers a lot of air time. But given what had happened to Gary Hart, it was inevitable that the press would report Flowers' story. All said, I think reporters handled the episode pretty well. They dutifully noted that she was getting paid and that there were holes in her story; if anything they spared Clinton by making less of the Flowers-Clinton tape. While there was some evidence that the tape had been doctored, Clinton nevertheless apologized to Mario Cuomo for saying on the tape that the New York governor acts like a Mafioso—proof positive that at least parts of the tape were accurate. And as Carville noted, the Flowers episode caused only a temporary dip in Clinton's polls. It was the volatile *combina-*

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tion of Clinton's evasiveness on the draft and Gennifer Flowers' accusation that created the Slick Willie problem. To say that the media overplayed the draft story is a mistake. The Vietnam War was one of the great moral issues of the late 20th century and the question of how Bill Clinton in 1992—or Dan Quayle in 1988 or Dick Cheney in 1996—dealt with it is a key issue, one that Americans eventually resolved, at least last time around, in his favor.

Besides, we reporters ought to get some credit for all the garbage we don't print. Throughout the Clinton campaign I had lots of accusations about Clinton land in my lap that I looked into and did not touch because they seemed groundless in the extreme. Similarly, *U.S. News*, my employer, received a tip late in the campaign that George Bush may have violated the Geneva Convention and strafed surrendering Japanese soldiers when he was a pilot during World War II. *U.S. News* examined the charges, which include some official U.S. documents, but they seemed too ambiguous to publish—especially during the crucial final days of a campaign. The magazine held on to the story, as did *Newsweek* and other outlets. Justifiably so.

Matalin and Carville are just as obsessed with photo-ops, soundbites, and strategy as the political reporters they love to criticize as shallow and superficial.

The strongest charge against the campaign press is, as Carville and Matalin both note, its unrelenting negativity. The fear of being labeled "in the tank" is the deepest fear any political reporter lives with, and it leads to a harder edge than is often appropriate. Part of the negativity, though, comes from being spun constantly by a White House communications operation, whether it is Bush's or Clinton's, that is rarely willing to be candid or acknowledge the obvious. As Mickey Kaus notes, the best way to deal with today's cynical press is not to moan like "a dinosaur trapped in a tar pit" but to deal with it. Kaus notes that Barney Frank's brutal honesty in dealing with his relationship with a male prostitute helped stave off what seemed like a certain death knell to his career.

Interestingly, the book offers a contrarian and provocative defense of political consultants. It is conventional wisdom, of course, that consultants are bad for America. They're said to trivialize politics, coarsen debate. The 1972 film "The Candidate" was the apotheosis of this belief. In the last line of the film the suddenly successful Senate candidate, Robert Redford, asks: "What do we do now?" The grim consultant offers no answer over the rising cheers of the crowd. The scene symbolized how vacuous the modern American campaign had become. Not surprisingly, Carville and Matalin reject this view; theirs is basically a sanguine view of politics—as relentlessly upbeat as Matalin's nightly talk show on CNBC, on which she interviews guests on a set that looks more like "Saturday Night Live" than "Meet the Press." They argue that all consultants do is help a candidate clarify and hone his message.

Much of the time this is true, but there are also examples in this book that show consultants at their worst. Carville is particularly proud of the way that the Clinton campaign crushed Paul Tsongas on issues of sacrifice such as the gasoline tax and cutting entitlements. Such positions are elitist, says Carville, favored by the media, but insensitive to the needs of the middle class. Perhaps. But the problem for Carville is that they are now *President* Clinton's positions. He raised the gas tax and made more of Social Security income taxable. Given the mood of the country and Congress, more cuts are on their way. By clobbering Tsongas with such vehemence, Clinton later looked foolish when he adopted some of those very same positions. Carville did a disservice to the public debate and made his boss look bad. All's fair in politics. But it isn't always smart. □

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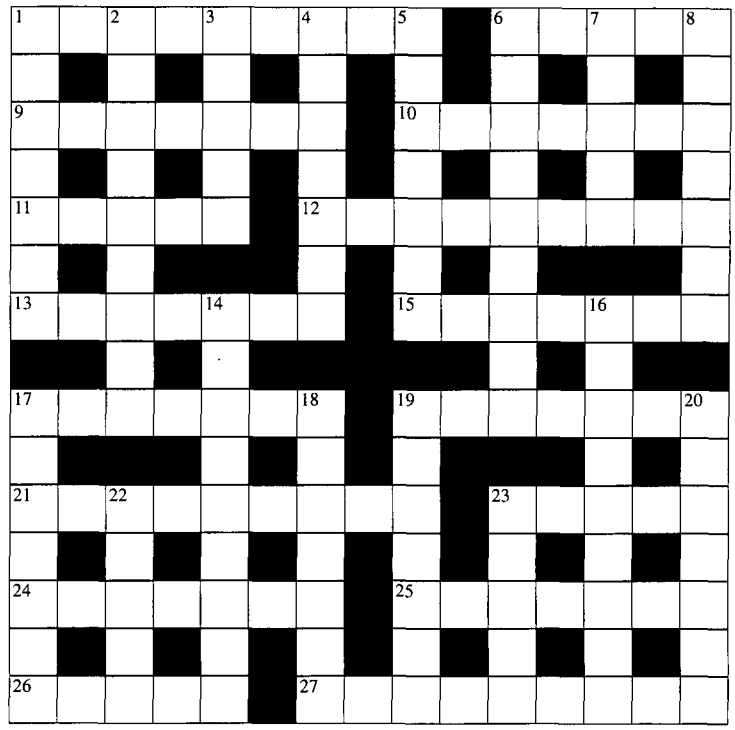
Political Puzzle

BY JOHN BARCLAY

The numbers indicate the number of letters and words, e.g. (2,3) means a two-letter word followed by a three-letter word. Groups of letters, e.g. USA, are treated as one word.



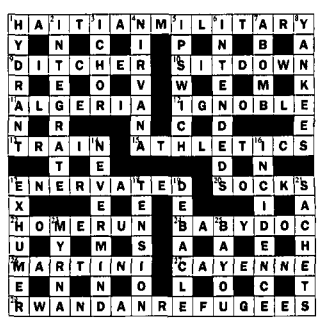
ACROSS

1. Reconstructed limb relic is focus of August action. (5, 4)
6. Problem area? After end of month it goes into artificial intelligence. (5)
9. See specialist dish it up? (7)
10. Golf tournament streams rerouted. (7)
11. Wits moving before start of tango dance. (5)
12. Went back shifting, e.g. dresser . . . . (9)
13. . . . as moving day came for prestigious institution. (7)
15. To eliminate cross is improper. (7)
17. Complained sheepishly about bed tale. (7)
19. Cream ducts directed around center of barn. (7)
21. Got a drink for march aid? (5, 4)
23. Strike money? (5)
24. How nuns mistakenly kept secret. (7)
25. Nothing blue about special test is devious. (7)
26. Possesses an adverse opinion on as the renovation. (5)
27. Steel coin manufactured for November events. (9)

DOWN

1. Problem area at Cairo assembly. (7)
2. Start teasing it mischievously (9)
3. Handsome wildlife trapped in bootleg retrospective. (5)
4. Kitchen utensil in New City era. (3, 4)
5. Mold gem soil for favored artifact. (7)
6. Yes, Christ trained display of emotions! (9)
7. Couples in the news changing times. (5)
8. Woman of influence mixes resin about driver's license, for example. (7)
14. Reno tunes played in confidence. (5, 4)
16. One reconditioned outsquats present position. (6, 3)
17. Broken thumb is metallic substance. (7)
18. Throw one off badly enraged. (7)
19. Put together version of poems following ending of fiasco. (7)
20. Los Angeles team red dogs in new alignment. (7)
22. Alien following fool for something of value. (5)
23. Type of project putting industry first in land tract. (5)

Answers to last month's puzzle:



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Political Booknotes

Scarcity or Abundance? A Debate on the Environment
Norman Myers and Julian Simon
W.W. Norton, $21
By Gregg Easterbrook

Recently, Stanley Fish, a prominent left-wing academician who believes that political correctness is good for you, and Dinesh D'Souza, a prominent right-wing analyst who believes academia has become a thought-police state, began doing little two-man shows, appearing jointly at college campuses to denounce each other with polite magniloquence. It might seem odd to schedule joint appearances with someone whose positions you claim to detest, but at least Fish and D'Souza are mutually civil, which is more than can be said for many other literary antagonists.

In *Scarcity or Abundance?*, the antagonists Norman Myers and Julian Simon join this vogue, this volume being the transcript of a joint appearance the two made at Columbia University in 1992. Myers, an English environmentalist and a leading doomsayer, believes environmental affairs to be so unswervingly bleak that, among other things, "global warming will mean no more winters at all in Britain" because colder weather in the United Kingdom has already "been forever eliminated by human agency." Simon, an American economist and a leading cornucopian, believes the environment and a range of other issues are peachy keen, and his "central premise" is that "almost every economic and social change or trend points in a positive direction."

In this book Myers and Simon do a better job of being civil than of forming fully persuasive arguments for their positions. *Scarcity or Abundance?* does not do justice to either's work, and contains such eminently dispensable filler as transcripts of audience questions, one of which begins, "I've listened very carefully to both of you and in your arguments I think you make very different assumptions . . ."

Myers and Simon both have important things to say, but both often succumb to the temptation of trying to make their views all-encompassing by dismissing every point on the other side. Myers first gained the public eye with his 1979 book *The Sinking Ark*, which posits that species extinction is running rampant. He has since taken orthodox doomsayer positions on nearly every ecological issue, becoming something of a darling of the establishment left foundation set, in part because of his Oxford affiliation and his fashionable British accent.

Myers is correct in thinking that species extinction numbers are among the most damaging ecological impacts caused by people—perhaps the worst, given that, unlike pollution or ozone depletion, extinction is irreversible. The numbers he uses are, however, hard to swallow. Myers says that right now human action causes the loss of "at least 30,000 species every year," a numbing 82 extinctions per day. Since there are surely many species yet to enter any taxonomic catalogue, some extinctions may well have gone by unnoticed. But if there are really 30,000 extinctions per year, about 1.5 million species would have vanished in the postwar era. Instead only about 200 actual extinctions have been documented worldwide in this century. The United States has six percent of the world's land area, so based on the 1.5 million figure, one could roughly estimate 90,000 U.S. extinctions in the postwar era. The highest documented actual figure for the U.S. for that period, however, is 14, with an inferential case that perhaps 100 additional little-known species fell extinct.

That is amply high to demonstrate that species extinctions are a serious issue requiring new conservation initiatives. Yet even adjusting for unknown species, the observed extinction figure is astronomically lower than Myers' estimate. In these and other important areas, Myers exaggerates the case for gloom.

Simon is best known as a defender of human population growth, having argued in *The Ultimate Resource* and other works that more people not only represent no lasting problem for the planet, but that an ever-expanding human population is a blessing because the more people there are alive, the more minds are available to solve the world's problems. As Myers is right to call attention to species extinction and other problems that industrialists would rather not talk about, Simon calls attention to a fact that for some reason gives the left the willies: namely, that bringing life into the world is a good thing.

But like Myers, Simon often goes overboard in the interests of not facing the flaws in his own arguments. For instance, he offhandedly dismisses the prospect of global warming as a non-issue, as it jeopardizes his contention that "almost every" trend is positive. Global warming is unlikely to be the immediate hyper-threat that Myers and others suggest. But from the standpoint

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of simple atmospheric chemistry, it's hard to believe all the carbon dioxide people are putting into the air won't eventually do *something*.

And is an expanding human population happy news? Though in principle the Earth may someday sustain a vastly greater human population than at present, with material security for all and a high standard of ecological cleanliness, that's someday, not today. Anyone who has walked through the slums of Jakarta, Karachi, Kinshasa, Manila, and numerous other places where the current ecological and social systems cannot support those already alive will find it hard to believe that each new cry of birth in these places is a cause for celebration. Simon is right that thoughts are what human existence is all about, and the more people, the more thoughts. But for the moment the thoughts of hundreds of millions of new children to be born in impoverished nations will be confined to ignorance and deprivation. Many trends in environmental affairs are, as Simon asserts, positive. Human population growth isn't necessarily one of them. *Gregg Easterbrook, a contributing editor of* The Washington Monthly, Newsweek, *and* The Atlantic Monthly, *is the author of the forthcoming book* A Moment on the Earth.

Understanding American Economic Decline
Michael A. Bernstein and David Adler, eds.
Cambridge University Press, $49.95
By Hobart Rowen

America, it is said, has been in an economic decline for perhaps two decades. Japan, and to some extent Germany, have emerged as a major competitor, catching up with America in productivity and living standards. At the end of World War II, Japan's gross domestic product was only one-eleventh the size of America's. But it now appears that some time after the beginning of the new century, Japan's GDP will be two-thirds the size of ours.

The debate on how this came to pass has been explored in countless books and articles. I have argued in the pages of *The Washington Post*, and in my book *Self-Inflicted Wounds—From LBJ's Guns & Butter to Reagan's Voodoo Economics*, that American mistakes at the highest levels of government, corporate, and labor power are responsible for this unhappy result.

Yet, I don't believe the situation is hopeless, as do the authors of a new work, *Understanding American Economic Decline*, co-edited by Michael A. Bernstein, an historian-economist from the University of California at San Diego, and David Adler, a television programming manager. Bernstein sets the tone of the book at the start: "Today, many [economic experts] fear that the American economy is weak and failing, destined to be a second-echelon participant in a new 21st century world economic order."

With an approach they identify as "largely outside the focus of mainstream economic theory," the authors raise questions that are timely as a backdrop to the current debate over President Clinton's economic policy.

The correctives suggested in this book are difficult to nail down. For example, Jane Knodell calls for "the creation of alternative financial institutions to provide long-term development finance, reform of the Federal Reserve, and/or bank regulatory reform." That sounds great, but Knodell doesn't tell us how to do it.

Among the most innovative essays in the book—and one that departs a bit from the overall defeatist thesis—is by James K. Galbraith and Paulo Du Pin Calmon on "Industry, Trade, and Wages." Galbraith, a former Congressional aide now at the University of Texas, and Calmon, a teacher at the University of Brasilia, say that "we remain agnostic on whether the American economy overall is or is not 'in decline.' Rather, we see weak sectors getting weaker, strong sectors getting stronger, and a range of problems as a result of the increasing gap between the two."

"An enormous contribution to understanding what's wrong with the system as well as how to fix it."
—*The Washington Monthly*

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Trial and Error in the American Courtroom

STEPHEN J. ADLER

The new book from the legal editor of *The Wall Street Journal*, Stephen J. Adler, brings the past and future of the American jury to life, making a compelling case for what the jury should be and what it has become.

TIMES BOOKS

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Galbraith and Calmon view the NAFTA trade treaty "with contingent optimism," which sets them apart from some of their co-authors. They find a close and strong link between industrial performance, trade, and wages. Thus, they conclude American industries must pay wages that match those paid in competing countries. They found no example among major industries that wages fall when their companies prosper in world and domestic markets; conversely, there were no cases of rising wages in the face of falling export sales.

The policy lesson for government, as Galbraith and Calmon read it, is to support the trade potential only for the most successful industries. The Clinton Administration has dedicated itself to unabashed mercantilist policy of pushing exports as the main engine of growth for the U.S. economy. Galbraith and Calmon say, wisely, that the United States cannot maintain an export advantage in all industries at once.

On the whole, although it is difficult to evolve a consensus theme from the book, there are at least scattered suggestions of a return to economic isolationism. For example, R.A. Blecker, a Washington economist associated with Clyde Prestowitz's Economic Policy Institute, calls for "pressure" on China and Japan to open up their markets. A "credible threat," he suggests, would be to erect "trade barriers in some cases where cooperation is not forthcoming."

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My view remains that the decline in America's relative economic power is regrettable only if one believes, in a macho way, that the United States always has to be first in everything. It makes more sense to me to believe that in an interdependent world, America will and should inevitably share power with Japan, Germany, and others. That's the route to global peace. I know the authors of *Understanding American Economic Decline* share that goal. But I'm not convinced they have shown us how to get there.

Hobart Rowen is the economics columnist for The Washington Post.

Who Guards the Guardians? The New Age of Nonprofit Accountability

The National Committee for Responsive Philanthropy, $25

By Adam Yarmolinsky

Outrage may be the most readily available emotion to those who contemplate the public scene today, and the world of philanthropy provides at least its share of occasions, as this report on nonprofit accountability demonstrates.

The occasions range from outright scandal (United Way, Marine Corps Toys for Tots, Covenant House) to exploitation of well-meaning charities by professional fundraisers (the United Cancer Council case, now in federal courts) to consistent failure to make regular public disclosure (how many foundations publish annual reports?). That the majority of the nation's half-million charities operate honestly, openly, and too often with painfully inadequate resources does not appease public indignation, perhaps because more is expected of them than of other institutions. And charities as a group have more fundamental problems, to which this report makes at least passing reference.

The system of federal and state laws governing charitable organizations has been singularly ineffective in anticipating outrage. State attorneys general, who are responsible for the oversight of charities, have not yet begun to exercise that responsibility in many states, or are just beginning to do so. The federal tax authorities can and do penalize foundation officers for abuses of trust, but the only weapon available to the feds against public charities is the blunderbuss of revocation of tax exemption, which hits the *recipients* of charitable bounty.

The situation may be about to change as a result of a legislative proposal worked out between the Oversight Subcommittee of Ways and Means, the Treasury, and representatives of organized charity. The Internal Revenue Service should be able to rescind unfair transactions (such as sweetheart payments for office rent and salaries above the market for executives) and levy fines against individuals who receive or pay excessive or unfair compensation for goods or services. Charities would be required to send copies of the tax returns that justify their tax exemptions (the famous Form 990) to anyone who asks, instead of making the return available only to someone curious enough to visit their offices. The reporting form itself would be redesigned to make it more user-friendly to the inquiring layman, and the IRS, instead of being required to conceal information about disciplinary actions, as it is now, would be required to publish these actions to all the world, while the reporting form itself would carry information about penalty taxes paid.

These changes, which are working their way through the legislative process, would make charities more law-abiding and more responsive to the general public. But in spite of exhortations by the Oversight Committee, enforcement will still depend on overstretched staffs both in the Service and in the states—a situation unlikely to change while federal and state tax-collectors focus their attention where the dollars are: delinquent taxpayers, rather than on the exempt folk.

One remedy proposed in the report would be to make it easier for private watchdogs to pursue charities in the

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courts, but this idea makes me a bit nervous. For every public-spirited challenge to a fat-cat foundation overpaying its trustees, I can see a Capital Legal Foundation given more latitude to harass Planned Parenthood or the NAACP Inc. Fund. Charities have traditionally provided a haven for the eccentric who proposes the abolition of slavery or suffrage for women, and too vigorous a house-cleaning may sweep out the eccentric along with the private advantage seeker.

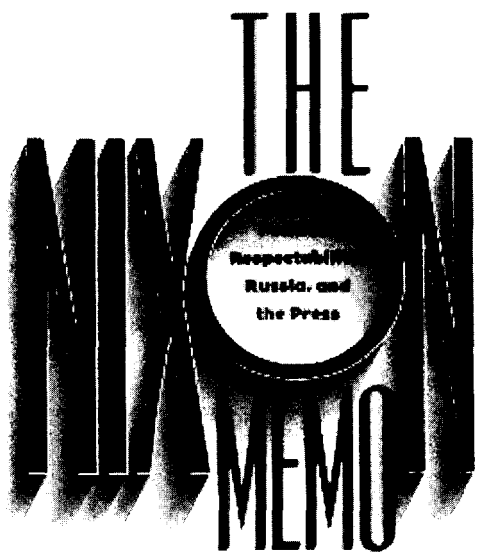
What these reforms don't address is the set of problems raised by fundraising practices of some charities—encouraged by professional fundraisers—where a large proportion of funds raised go for administrative and fundraising expenses.

Then, too, the government has been shifting responsibility for the operation of social welfare programs to the charities, so that social welfare expenditures by charities (excluding K-12 education, pensions and veterans' benefits) are 20 percent greater than direct federal spending, and almost as much as total government operations, federal, state, and local, in this area. Five-sixths of this activity is financed by government grants and contracts, and by fees for services, accounting for the large increase in charitable *spending*, while charitable *giving* has been increasing slowly (but steadily) over the years.

Yet this trend creates worrisome problems for the future: Increasing dependence on government funding threatens the independence of what is often referred to as the independent sector. A traditional bulwark against government interference has been removed by the recent Supreme Court decision in the *Rust* decision (the "gag rule" decision) in which the Court allowed the Bush Administration to forbid physicians working for Planned Parenthood in a federally supported pre-natal counseling program to advise patients of the existence of abortion counseling services. A Justice Department official testified in a Senate hearing after the decision that "In a sense, when the government funds a certain view, the government itself is speaking. It therefore may constitutionally determine what is to be said." The Clinton Administration reversed the gag rule policy, but the Court has removed the First Amendment protection against future administrations, at least until the court changes its mind, or confines the ruling to the facts of the *Rust* case.

Another troubling development is Congress' decision last year to make permanent a three percent floor on itemized deductions, including the charitable deduction, for high-income taxpayers. At the three percent level, the floor doesn't significantly reduce the availability of the charitable deduction; its effects will be absorbed by deductions for mortgage and taxes. But as Congress almost inevitably raises the floor to four and five and six percent (as happened long ago with the medical expense deduction) studies have shown that charitable contributions will fall, and charities' independence of the government dole will be further reduced.

Marvin Kalb's



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Still another area of recent research, too briefly summarized in the report, is the work of Charles Clotfelter and of Julian Wolpert, analyzing who benefits from charity. Both scholars find that there is relatively little redistribution of wealth involved. Clotfelter points out that public hospitals tend to serve more poor people than do voluntary hospitals, and private colleges tend to serve a wealthier clientele than public institutions (although this balance is shifting). Wolpert finds that charities tend to serve their own communities, and "generosity is...generally higher where affluence is greater." Salamon notes that only 27 percent of human service providers report targeting their services primarily to the poor.

The regulation of philanthropy is necessarily a series of compromises between guiding the charitable impulse and giving scope to the charitable imagination. The report raises all the legitimate current regulatory issues, as well as a few foolish ones. Unfortunately, it does so in abbreviated and often superficial fashion. You can't cover so large a subject analytically in 33 pages plus a wraparound press release, especially when much of the space is devoted to studio photographs of the talking heads. But I don't know of any more serious comprehensive treatment of this set of serious problems. This is as good a place as any to begin.

Adam Yarmolinsky is the Regents Professor of Public Policy in the University of Maryland system and a founding board member of Independent Sector.

Breakup: The Coming End of Canada and the Stakes for America
Lansing Lamont
W.W. Norton & Co., $25
By Charles W. Bailey

People have been predicting the collapse of Canada for decades, and in recent years the forecasts have grown ever bleaker. Lansing Lamont's take on the subject is one of the most pessimistic—and one of the most illuminating.

Lamont, a former newsmagazine correspondent and later director of Canadian affairs at the Americas Society, has written a book that is half history and half docudrama: The first half is a concise account of the first 300 years of Canadian history; the second half is a "scenario for the future," the author's speculation on what is still to come.

Lamont's is a grim prediction: Quebec's separatists will win their long struggle to take the French-speaking province out of the Canadian confederation and make it a sovereign state. This is followed by a brief outburst of violence; eventually the remaining Canadian provinces coalesce into regional groupings whose economic ties to the United States are stronger than their political ties to Ottawa.

One can disagree with Lamont's predictions—everyone who follows events in Canada has his own version—but you can't argue with his estimate of the present situation:

> Canada's never robust psyche had been buffeted over the last four decades by the nation's final severance of its umbilical ties to Britain and the Empire; the rise of its new trade and economic dependency under the American Colossus; the emergence of a militant Quebec in the 1960s; and successive waves of immigrants . . . who changed the ethnic mix of large urban centers like Toronto and Vancouver, threatening to marginalize Canada's once-ruling WASPs.

Lamont goes on to discuss each of these factors—"the country's bedrock incompatibilities"—and show how they are rooted in the country's history, economy, and geography.

Canada's demographics are startling: The country is composed of nearly seven million square miles—but there are only 28 million people, or an average of just four people per square mile. Almost all Canadians live in a narrow strip adjacent to the U.S. border; only seven percent of the country's land area is fully settled.

For all that, the reader will find striking similarities with U.S. politics today: a lack of strong leadership, a pervasive public disillusion with politics, mushrooming public debt, a revival of populism.

Every schoolchild knows that the U.S.-Canadian border is the longest undefended frontier in the world. (Lamont labels that "the longest undefended cliché in Canadian-American relations.") But most Americans know almost nothing else about Canada. They could remedy that ignorance quite painlessly by reading this book.

Charles W. Bailey is a member of the Editorial Advisory Board of The Washington Monthly.

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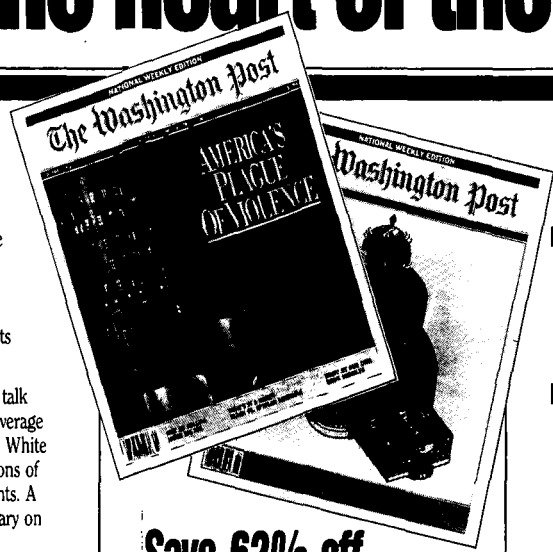

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The United States and the Worldwide Struggle for Democracy in the Twentieth Century

Tony Smith

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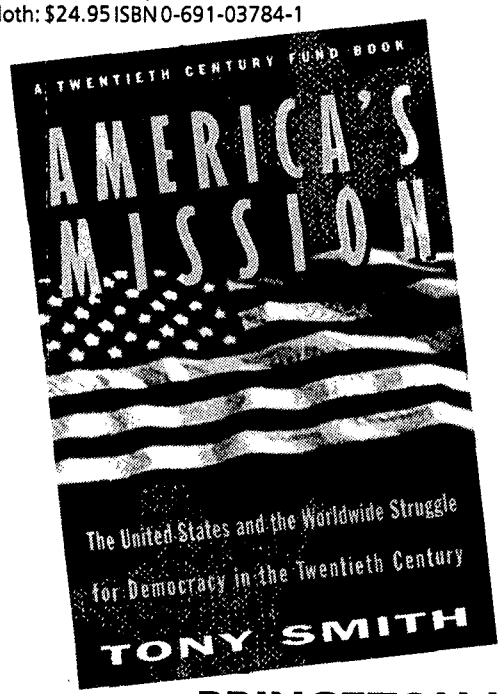

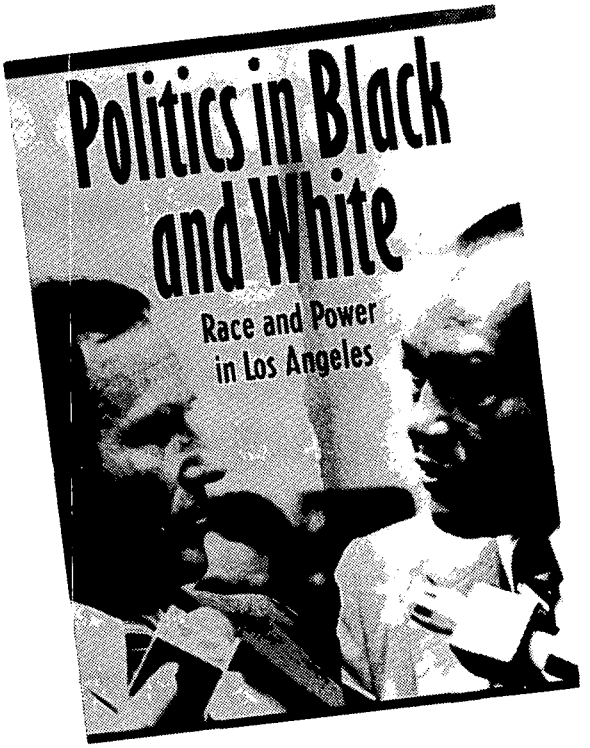

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